

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. DAVID LOVERIA Y SANTOS, DEFENDANT-APPELLANT.

G.R. No. 79138. July 02, 1990

Ponente: CORTES, J.

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CORTES, J.:

The accused-appellant David S. Loveria was charged before the Regional Trial Court Branch CLIX (159) with the crime of Robbery with Homicide and Frustrated Homicide under the following information:

That on or about the 21st day of February, 1985, in the Municipality of Marikina, Metro-Manila, Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together with three (3) John Does whose true names, identities and present whereabouts are still unknown and mutually helping and aiding one another, armed with a knife, with intent of gain and by means of force, violence and intimidation, did, then and there willfully, unlawfully and feloniously, hold-up a passenger jeepney with Plate No. NXG-150-Pil. '84, one of the passengers, Richard Bales y Andres of his Seiko Wrist Watch worth P300.00 and a colored brown wallet containing P50.00, to the damage and prejudice of the latter in the aforementioned amount of P350.00: that on the occasion of said robbery, said accused, with intent to kill, did, then and there willfully, unlawfully and feloniously attack, assault and stab with the said knife one Ricardo Yamson y Malanon, thereby inflicting upon him stab wounds which directly caused his death, and one Cerilo Manzanero y Nacion the driver of the said passenger jeepney, on the vital parts of his body, thereby inflicting upon him stab wounds which ordinarily would have caused his death, thus performing all the acts of execution which should have produced the crime of homicide as a consequence, but nevertheless did not produce it by reason of cause independent of the will of the accused, that is, due to the timely and able medical attendance rendered to the said Cerilo Manzanero y Nacion which prevented his death.

Contrary to law. [Rollo, p. 3.]

Upon being arraigned on July 3, 1985, the appellant entered a plea of not guilty [Record, p. 18.]

The facts as found by the trial court are as follows:

On February 25, 1985, at around 7:00 in the evening, Cerilo Manzanero was driving a jeepney fully loaded with passengers enroute from Cubao, Quezon City to Cogeo, Marikina, Metro-Manila. While crossing the bridge of Barangay Baranca, Marcos Highway, Marikina, Metro Manila, accused shouted “hold-up” and Manzanero stopped his jeep. Accused who was seated right behind Manzanero, poked a knife on the latter’s right side of his nape and then pulled him off his seat with the assistance of another companion into the inner rear portion of the jeep; at the same time, stabbing Manzanero with knives at the front and back of his body. Accused had three (3) other companions. One was seated on the right side of the jeep, opposite accused: the two others were seated opposite each other at the rear side of the jeep. Accused and his three other companions divested the passengers of their jewelries, watches, rings and necklaces.

Manzanero had a companion-conductor by the name of Richard Bales who was seated in front of the jeep at the right side. He was likewise stabbed by the other companion of accused who he identified as Martin Castaneda but he sustained only slight injury on his finger. His Seiko watch was taken from him.

Passenger Ricardo Yamson was likewise seated on the front part of the jeepney in-between driver Manzanero and conductor Bales. He was stabbed by one of the holduppers and died that same night. Testimonies of victim driver Cerilo Manzanero; passenger Betty S. Apolinario; conductor and victim Richard Bales; Patrolmen Jaime Agueda and Bill Ayun (TSN, Hearings of August 14 and 21, 1985; October 9, 1985; November 13, 1985; May 5, 1986; June 23, 1986, July 15, 1986, December 8 and 23, 1986, January 6, 1987); Exhibits B and I, C and O)

Cerilo Manzanero was brought to Sto. Nino Hospital at Marcos Highway and then transferred to Quezon City Medical Center where he was treated by Dr. Antonio P. Ligor who issued a Medico-Legal Certificate with the following diagnosis:

Multiple stab wound antero-posterior chest wall, Bilateral, Penetrating. Bilateral Hemothorax Bilateral Thoracostomy

(Exhs. A and A-1). Dr. Ligor testified that these injuries would have caused the death of Manzanero were he not treated medically. (TSN, hearing of October 21, 1986).

Mrs. Amada Yaco, mother-in-law of Manzanero presented receipts for medicine expenses in the amount of P2,051.80 (Exhs. J, J-1 to J-19; M-4 to M-6) doctor's fee of P3,000.00 (Exh. K); payments for blood in the amount of P470.00 (Exhs. L and M); and P2,700.00 for the hospital bills (Exhs. M-1 to M-3) or a grand total of P8,221.80.

Victim Ricardo Yamson was brought to the Quirino Memorial Hospital at 8:30 in the evening of February 21, 1985 where he died of profuse hemorrhage, secondary to stab wound at 9:20 in the same evening (Exhs. F, G and H; Testimony of Mrs. Carmelita Yamson, Hearing of February 3, 1986). Carmelita Yamson, victim's mother, testified that for the funeral parlor services, they spent P5,300.00; for cemetery expenses, P1,700.00; for transportation expenses, P750.00; for interment, P12,000.00; for 40 days prayer period, P4,500.00; for expenses incurred during the preliminary investigation on the Fiscal's office in Marikina, Metro Manila, P1,500.00; or a total expenses of P28,750.00 which witness rounded off to P29,000.00 (TSN Hearing of February 3, 1986).

[Trial Court Decision, pp. 2-3.]

The defense offered by the appellant is summarized by his counsel as follows:

The accused David Loveria, 25 years old, formerly residing at Sitio Maagay, Antipolo, Rizal and a volunteer worker of the Share and Care for Poor Settlers Pastoral (SCAP for short) declared that on February 18, 1985, he was attending a live-in seminar at the Communication for Asia in Old Sta. Mesa, Manila. The duration of the seminar was from February 18 to February 22, 1989. Between 8:00 and 8:30 o'clock in the evening of February 21, 1985, upon permission from their training officer, he went to the Farmers Market in Cubao to ask money from his mother for transportation fare for the following day. When he failed to meet his mother, he decided to go back to the Communication Foundation for Asia. Fortunately, at the loading zone for passenger vehicles bound for Sta. Mesa, he met his father who gave him money. After that, he went back to the Communication Foundation for Asia and stayed there the whole evening. (TSN, pp. 6-13, January 5, 1987)

[Appellants Brief, p. 6.]

After trial, the trial court found the appellant guilty as charged. The dispositive portion of the decision dated May 26, 1987 reads:

IN VIEW OF ALL THE FOREGOING, the prosecution having established the guilt of (the) accused beyond reasonable doubt, the Court hereby finds accused David Loveria GUILTY of the complex crime of Robbery with Homicide and Frustrated Homicide under Article 294(1) of the Revised Penal Code with the aggravating circumstance of having been committed in band, without any mitigating circumstance; and, in relation to Article III, Section 19 (1) of the 1987 Constitution of the Republic of the Philippines, hereby imposes upon

him to suffer life imprisonment or reclusion perpetua; and orders said accused:

(1) to pay the compulsory heirs of deceased victim Ricardo Yamson, represented by his mother Conchita Yamson, the amount of THIRTY THOUSAND PESOS (P30,000.00) as an indemnity for Ricardo Yamson's death; TEN THOUSAND PESOS (P10,000.00) as and for actual damages; TEN THOUSAND PESOS (10,00.00) as and for moral damages; TEN THOUSAND PESOS (P10,000.00) as and for exemplary damages;

(2) to pay victim Cerilo Manzanero the amount of EIGHT THOUSAND TWO HUNDRED TWENTY ONE PESOS & 80/100 (P8,221.80) as indemnity for actual damages; P5,000.00 as and for moral damages; and P5,000.00 as and for exemplary damages; and,

(3) to indemnify Richard Bales the amount of THREE HUNDRED PESOS (P300.00) for the unrecovered watch.

[Trial Court Decision, p. 7.]

From this judgment of conviction, the appellant filed the present appeal.

The first issue raised by the appellant pertains to the credibility of the prosecution witnesses.

To prove the culpability of the appellant, the prosecution presented the following witnesses: Cerilo Manzanero, the driver of the jeepney; Richard Bales, the companion/conductor of Manzanero; Betty Apolinario, a passenger of the jeepney; Dr. Antonio Ligot, the physician who examined Manzanero; Pat. Bill Ayun and Pat. Jaime Ganueda, of the Marikina Police Station who conducted an investigation of the incident. The following witnesses were also presented to prove the civil liability arising from the crime; (1) Carmelita Yamson, the mother of the victim Ricardo Yamson; and (2) Amada Yaco, the mother-in-law of Manzanero.

The appellant specifically assails the credibility of Cerilo Manzanero, Betty Apolinario and Richard Bales, all of whom positively identified the appellant as one of the perpetrators of the crime.

According to Manzanero, while he was driving his fully loaded passenger jeepney on the evening of February 21, 1985 from Cubao to Cogeo, Marikina, he heard a person from the back announce a hold-up, which made him pull the jeepney to a sudden stop. Whereupon, the passenger immediately behind him, or on the extreme left side of the jeepney, poked a bladed weapon on the right side of his neck (TSN, August 14, 1985, p. 5.) Manzanero was able to identify the person who poked the knife at him as the appellant David Loveria because the former managed to turn his face towards the latter [TSN, August 21, 1985, p. 13.]

Manzanero was then taken by the appellant and three other men inside the jeepney, at the back portion thereof, and was stabbed several times [TSN, August 14, 1985, p. 6.] After the stabbing, Manzanero's wristwatch and earnings were taken from him [TSN, August 21, 1985, p. 17.] Injured, Manzanero rolled down from the jeepney but was able to flee [TSN, August 14, 1985, p. 11.]

Richard Bales, the companion/conductor of Manzanero, who was seated on the front seat corroborated the testimony of the Manzanero on almost all its material points. He testified that he saw the appellant stab Manzanero [TSN, June 23, 1986, pp. 3-4 & 16.] However, Bales added that after the four men were finished with Manzanero, they turned to him and Ricardo Yamson, a passenger who was also seated on the front seat beside Bales [Id. pp. 6-7.] One of the robbers, whom Bales identified as a certain Martin Castaneda, stabbed him, injuring his finger, and took his watch [Id.] The other robbers chased Yamson, who attempted to flee and stabbed him on the neck (id., pp. 16-17.) Yamson was taken to the Quirino Memorial General Hospital but died that same night [Exh. "F" (Medico-Legal Certificate) and Exh. "G" (Autopsy Report).]

Betty S. Apolinario, a passenger who was seated on the left side of the jeepney testified that the four hold-up

men boarded the jeepney in Cubao [TSN, October 9, 1985, p. 5] and seated themselves on the four corners of the jeepney [Id, p. 6.] Apolinario stated that she saw the appellant David Loveria poke a knife at the driver, pull the latter from the driver's seat, and stab him after taking him to the inner back portion of the jeepney [Id., pp. 4-5.] She was able to remember the appellant because she was the third passenger from the driver's back. In other words, there was only one person between her and the appellant [Id., p. 4.] Apolinario also testified that the hold-up men forcibly took valuables from the passengers [Id., p. 8.]

The appellant contends that the trial court erred in giving credence to the testimony of Cerilo Manzanero, the driver, because of its improbability. The appellant argues that "[i]f indeed the purpose was to stab the jeepney driver, then there was no need to bring him to the rear portion of the jeepney to accomplish the purpose. He could be stabbed while seated at the driver's seat." [Appellant's Brief, p. 7.]

The contention is without merit. It is true that Manzanero could have been stabbed by the appellant while the former was at the driver's seat. But neither was it improbable for appellant to have stabbed Manzanero in the manner described by the latter and corroborated by witnesses Apolinario and Bales. The motive which impelled the appellant and his companions in pulling Manzanero out of the driver's seat and stabbing him at the inner rear portion of the jeepney is known only to them. The Court will not speculate as to why the appellant and his companions executed the crime in the manner that they did. Crimes are known to have been executed in odd and unusual ways. But in the instant case, the Court is of the considered view that there was nothing strange nor improbable in the testimony of Manzanero, Apolinario and Bales that after the jeepney stopped, the appellant poked a knife at Manzanero, pulled the latter out of the driver's seat, and together with his companions took him to the rear portion of the jeepney where Manzanero was eventually stabbed and robbed of his wristwatch and earnings.

The appellant next turns to witness Betty S. Apolinario, contending that she failed to positively identify the appellant because when asked to identify any of the holdup men who may be present in court, she stated the following in reference to the appellant: "I think he is the one wearing a white T-shirt" [TSN, October 9, 1985, p. 7.] However, Apolinario's use of the expression "I think" does not necessarily indicate her uncertainty as to the identity of the appellant. In fact, when the defense tried to exploit, during the cross-examination of Apolinario, the seemingly tentative statement just quoted, it became apparent that she was sure and positive about the identity of the appellant. The pertinent portion of the cross-examination is quoted as follows:

Q - Mrs. Witness you also testified last time in answer to the question of the private prosecutor, I quote, "This person who stabbed the driver if you will see him, will you be able to identify him?" and you said "Yes, sir". The next question, "Will you please tell us whether this person is present in this courtroom?" and you said "I think he is the one wearing a white T-shirt". What do you mean by "I think he is the one wearing a white T-shirt"?

A - What I have in mind he is the one there that is - why I am pointing to him. (Witness pointing to the accused David Loveria.)

Q - Are you positive about the identification of the accused David Loveria or could it be also another person?

A - No, I am not wrong.

[TSN, November 13, 1985, pp. 18-19.]

To impugn further the credibility of the prosecution witnesses, the appellant cites alleged inconsistencies between the sworn statements given separately by Manzanero and Bales to the police on the one hand, and their testimonies in open court, on the other hand. The appellant claims that Manzanero did not mention in his affidavit (Exh. "I") that the hold-up men took his money and valuables but on cross-examination, he declared that the

holdup men took his wristwatch and the boundary for the day. The appellant further claims that Richard Bales did not implicate him in his affidavit but pointed to him on the witness stand. Affidavits, taken ex-parte, are generally considered to be inferior to the testimony given in open court [People v. Pacola, G.R. No. L-26647, August 14, 1974, 58 SCRA 370.] The Court has consistently held that an affidavit, taken ex-parte, is almost always incomplete and inaccurate, sometimes from partial suggestions, sometimes from 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 [People v. Tan, 89 Phil. 337 (1951); People v. Gonzales, G.R. No. L-40727, September 11, 1980, 99 SCRA 697; People v. Avanzado, Jr., G.R. No. 73116, February 29, 1988, 158 SCRA 427.]

It has likewise been held that inconsistencies between the testimonies given during the investigation stage and during the court proceedings may be disregarded without impairing the credibility of the witnesses, considering such factors as illiteracy [People v. Sato, G.R. No. L-47911, July 27, 1988, 163 SCRA 602] or inability of the witness to read the language in which the ex-parte affidavit was written [People v. Capinpin, Jr., G.R. No. 67785, October 4, 1988, 166 SCRA 233.] In the instant case, Manzanero explained his failure to state in the affidavit that certain things were taken from him, by the fact that at the time of the execution of the affidavit, he had just checked out from the hospital and was still under medication [TSN, August 21, 1985, p. 17.]

As a final assault on the credibility of the prosecution witnesses, the appellant notes the delay by the former in reporting the incident.

The crime was committed on February 21, 1985. Manzanero reported the matter to the police on March 14, 1985 (Exh. "B"). However, Manzanero was confined at the Quezon City Medical Center from February 21 up to March 2, 1985 [Exh. "A"]. Hence, it is evident that the lapse of time between the commission of the crime and the filing by Manzanero of a complaint with the police, was due to the fact that he was still recuperating from the wounds inflicted on him.

Although Richard Bales executed his affidavit only on May 7, 1985 [Exh. "O"], while Betty Apolinario remained silent until she was presented in court to testify, these circumstances alone should not destroy their credibility. The rule is well-established that the failure to reveal or disclose at once the identity of the accused does not necessarily affect, much less impair, the credibility of the witness [People v. Valdez, G.R. No. 75390, March 25, 1988, 159 SCRA 152.] The initial reluctance of witnesses to volunteer information about a criminal case and their unwillingness to be involved in criminal investigations due to fear of reprisal is common and has been judicially declared not to affect credibility [People v. Rosario, G.R. No. L-46161, February 25, 1985, 134 SCRA 497.]

In fine, the Court, after a thorough examination of the entire record of the case, especially the transcript of stenographic notes, finds the trial court's reliance on the credibility of the prosecution witnesses to convict the appellant, to be well-founded. The claims made by the appellant have not impaired the credibility of the prosecution witnesses who positively identified him as one of the perpetrators of the crime.

Finally, the appellant assails the manner in which he was identified by Manzanero at the headquarters of the 225th Philippine Constabulary (PC) in Cogeo, Antipolo, Rizal, claiming violation of his constitutional right to counsel.

Sec. 20, Art. IV of the 1973 Constitution, which was in force at the time the events under review occurred reads:

Sec. 20. No person shall be compelled to be witness against himself. Any person under investigation for the commission of an offense shall have the right to remain silent and to counsel, and to be informed of such right. No force, violence, threat, intimidation, or any other means which vitiates the free will shall be used against him. Any confession obtained in violation of this section shall be inadmissible in the evidence.

Sec. 12 (1), Art. III of the 1987 Constitution provides similar guarantees by stating:

Sec. 12(1). Any person under investigation for the commission of an offense shall have the right to remain silent and to have competent and independent counsel preferably of his own choice. If the person cannot afford the services of counsel, he must be provided with one. These rights cannot be waived except in writing and in the presence of counsel.

The Court must emphasize that the so-called Miranda rights contained in the abovequoted constitutional provisions may be invoked by a person only while he is under custodial investigation [People v. Duero, G.R. No. 52016, May 13, 1981, 104 SCRA 379.] which has been defined as the “questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way” [People v. Caguioa, G.R. No. L-38975, January 17, 1980, 95 SCRA 2, 9 citing Miranda v. Arizona, 384 U.S. 436.] Hence, for instance, these constitutional rights may no longer be claimed by a defendant in a criminal case already pending in court [People v. Ayson, G.R. No. 85215, July 7, 1989] because he is no longer under custodial investigation.

The ruling enunciated in Gamboa v. Cruz, [G.R. No. 56291, June 27, 1988, 162 SCRA 642], concerning the right to counsel of a person under custodial investigation finds application in the instant case. In that case, the accused was arrested for vagrancy and taken to the police station. The following day he was placed on a line-up and a female complainant pointed to him as one of the persons who robbed her. While on trial, the accused filed a motion to acquit or demurrer to evidence on the ground, among others, that he was deprived of his constitutional right to counsel at the time the complainant was in the process of accusing or identifying him for allegedly committing a crime. The motion having been denied by the trial court, the accused filed a petition for certiorari and prohibition with the Supreme Court, which ruled that the right to counsel of a person under custodial investigation cannot be invoked until such time that the police investigators start questioning, interrogating or exacting a confession from the person under investigation. The Court held that in the police line-up conducted in that particular case, it was the complainant who was being investigated and who gave a statement to the police while the accused was not questioned at all. Thus, the Court concluded that the latter could not, during the line-up, invoke his right to counsel because he was not under custodial interrogation. In the case at bar, Manzanero, upon learning that certain hold-up men were being detained at the 225th PC Company, Cogeo, Antipolo, Rizal in connection with another robbery, went there to check. Having identified the appellant among the detainees, he reported the matter to the Marikina police (See Exh. “B”). Thereafter, Pat. Bill Ayun accompanied Manzanero back to the PC headquarters in Antipolo where Manzanero identified to Pat. Ayun the appellant as one of the persons involved in the incident. Pat. Ayun then took the sworn statement of Manzanero which was presented in court as Exh. “B” [TSN, December 8, 1986, p. 3.] Since, as in the Gamboa case, the appellant was not investigated when Manzanero was in the process of identifying him, he cannot claim that his right to counsel was violated because at that stage, he was not entitled to the constitutional guarantee invoked.

But even assuming that the process of identification of the appellant by Manzanero at the PC headquarters was attended by constitutional infirmities, only Manzanero’s sworn statement [Exh. “B”] where he identified appellant and which was taken by Pat. Ayun, would be excluded for being inadmissible in evidence. The testimony of Manzanero made in open court positively identifying the appellant, as well as those of Richard Bales and Betty Apolinaria, would not be affected. These testimonies, taken together with the other evidence on record would be sufficient to sustain the trial court’s judgment of conviction.

The defense of alibi put up by the appellant has not helped him any for it has not destroyed the damaging effects of the evidence for the prosecution. Courts look upon the defense of alibi with suspicion and always receive it with caution, not only because it is inherently weak but also because of its easy fabrication [People v. Badilla, 48

Phil. 718 (1926); People v. Lumantas, G.R. No. L-16383, May 30, 1962, 5 SCRA 157; People v. Genoguin, G.R. No. L-23019, March 28, 1974, 56 SCRA 181; People v. Gaddi, G.R. No. 74065, February 27, 1989, 129 SCRA 649; People v. Salcedo, G.R. No. 78774, April 12, 1989; People v. Somera, G.R. No. 65589, May 31, 1989.] For alibi to succeed, it must be shown not only that the accused was at some other place but that it was physically impossible for him to have been at the site of the crime at the time of its commission [U.S. v. Oxiles, 29 Phil. 587 (1915); People v. Alcantara, G.R. No. L-26807, June 30, 1970, 33 SCRA 812; People v. Pigon, G.R. No. 76048, May 29, 1989] In People v. Lumantas [G.R. No. L-28355, July 17, 1969, 28 SCRA 764,] where the accused claimed that at the time of the killing he was in another barangay two kilometers away from the scene of the crime, the Court held that it was not impossible for him to have been at the place where the crime was committed at the time of its commission. In the case at bar, the appellant admitted his presence in Cubao on the night the crime was committed [TSN, January 6, 1987, p. 14.] The Court notes the fact that the four men who committed the crime boarded the jeepney in Cubao [TSN, October 9, 1985, p. 5.] And although according to the appellant he was in Cubao at 8:30 p.m. while the crime was committed between 7:00 p.m. to 8:00 p.m. in Marikina, the Court rules that the required physical impossibility of being at the scene of the crime has not been proved for alibi as a sufficient defense to become available to the appellant.

Moreover, the defense of alibi cannot prevail over the positive and credible testimony of the prosecution witnesses that the accused committed the crime [People v. Chavez, G.R. No. L-38603, September 30, 1982, 117 SCRA 221; People v. Torres, G.R. No. 76711, September 26, 1988, 165 SCRA 702; People v. Sabado, G.R. No. 76952, December 22, 1988, 168 SCRA 681.]

WHEREFORE, in view of the foregoing, the decision appealed from is hereby AFFIRMED.

SO ORDERED.

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

Fernan, C.J., on leave.

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