

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. BONIFACIO DOMINGO ALIAS “PONCING”, ERNESTO CALDERON, CHARLITO PASCUAL ALIAS “CHARLIE”, AND DANILO PEREZ, DEFENDANTS, ERNESTO C...

G.R. NO. 82375. April 18, 1990

Ponente: PADILLA, J.

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PADILLA, J.:

In an Information docketed as Criminal Case No. 4326 in the Regional Trial Court of Nueva Ecija, Bonifacio Domingo alias “Poncing”, Ernesto Calderon, Charlito Pascual alias “Charlie” and Danilo Perez were charged with the crime of Robbery with Homicide committed, as follows:

“That on or about the 1st day of June, 1984, in Cabanatuan City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually aiding and abetting one another and being then armed with 2 guns and a knife, with intent to gain and with the use of violence upon persons, did then and there wilfully, unlawfully and feloniously take and carry away the following articles, to wit:

Cash money

P 10,000.00

One (1) Diamond ring

20,000.00

One (1) Citizen wrist watch

1,000.00

One (1) Chinese gold necklace

12,500.00

Two (2) Chinese gold bracelets

10,000.00

One (1) Lady’s Diamond ring

15,000.00

Assorted jewelries

25,000.00

400 dollar bills

7,200.00

Total -----

P100,700.00

from the store owned by one JUAN P. GARCIA, a septuagenarian, situated along Paco Roman Street, this City, to his damage and prejudice in the aforesaid amount of P100,700.00, and as a result, and on the occasion, of the aforesaid robbery, the said Juan P. Garcia suffered a stroke due to extreme fear which directly caused his death when the robbers pointed their guns at him.”[1]

However, only the accused Ernesto Calderon, Charlito Pascual alias “Charlie” and Domingo Perez were arrested[2] and when arraigned, they pleaded “not guilty” of the crime charged in the Information. The three (3) accused were put on trial and the conclusion thereof, Judge Tirso Y. Reyes rendered judgment, as follows:

“IN VIEW OF ALL THE FOREGOING, judgment is hereby rendered finding the accused, ERNESTO CALDERON, CHARLITO PASCUAL, alias “Charlie”, and DANILO PEREZ, guilty beyond reasonable doubt of the crime of robbery with homicide as charged in the information, defined and penalized under Article 294, paragraph 1, of the Revised Penal Code. Considering that the mitigating circumstance of lack of intention to commit the crime of homicide but which, nevertheless supervened in the course of the robbery, was offset by the fact that said accused wore masks at the time of the commission of the crime, each of them is hereby sentenced to suffer imprisonment of reclusion perpetua, and to indemnify the heirs of the victim, Juan P. Garcia, in the sum of ONE HUNDRED THOUSAND SEVEN HUNDRED (P100,700.00) PESOS, Philippine Currency, but only to the extent of One-Fourth (1/4) thereof for each of them, as the remaining one-fourth (1/4) should be shouldered by the other accused, Bonifacio Domingo, who is still at large, in case of conviction, with subsidiary imprisonment in case of insolvency, not to exceed one-third (1/3) of the amount pertaining to each.

With costs against the accused.”[3]

From this judgment, the accused have appealed to this Court raising the issue of credibility of witnesses and more particularly, “whether the testimonies of Flora Farfaran and Renato Garcia were credible enough to sustain a judgment of conviction.”

The facts of the case, as testified to by the witnesses for the prosecution, show that about 6:00 to 7:00 o’clock in the evening of 1 June 1984, while Renato Garcia was inside the store of his parents Juanito Garcia and Marina Gonzales in Paco Roman Street, Cabanatuan City where they sold medical and dental supplies, a person, whom he later identified as the accused Charlie Pascual, came and asked to buy a dental equipment known as “metal.” When he turned his back to tell Juanito Garcia, who was eating at the back of the store which they used for living quarters, that somebody was there to buy “metal”, Charlie Pascual poked a gun at his (Renato’s) back and told him to get inside the house. As he looked back, he saw that two (2) other persons, whom he later identified as the accused Danilo Perez and Ernesto Calderon, had followed them inside. Once inside, the three (3) accused identified themselves to be members of the NPA and asked for money.

The residents of the house were told that nobody would get hurt if they just followed orders. Ernesto Calderon went upstairs to see if somebody was there while Charlie Pascual asked for the keys from Juanito Garcia after which he opened the drawers and took the money, about P10,000.00, placed inside. Renato Garcia was then told to lie flat on the floor. While Charlie Pascual was insisting that Juanito Garcia give them money and valuables, Juanito Garcia, all of a sudden, complained of dizziness, saying “ako hilo” and collapsed on the floor. At that point, a knock was heard at the door. Danilo Perez and Ernesto Calderon immediately covered their faces with

handkerchiefs. Ernesto Calderon later removed the cover from his face and went to the door. When he came back, he brought with him Flora Farfaran, the househelp who just arrived from school.[4]

Upon entering the room, Flora Farfaran saw Juanito Garcia lying on the floor. She thought he was dead. She was afraid and could not shout. She also saw Renato Garcia, the latter's son Bonbon and Marina Gonzales, as well as two (2) persons, whom she later identified as the accused Danilo Perez and Charlie Pascual, who were ransacking the place for money and valuables. After a while, they were herded to the comfort room and locked inside. Juanito Garcia, however, was left lying on the floor. About thirty (30) minutes later, Flora Farfaran and Marina Gonzales were taken out from the comfort room and brought to the bodega. Marina Gonzales was then ordered to open the safe, but Marina said that she did not know the combination. Charlie Pascual threatened to kill them, but Marina Gonzales insisted that only Juanito Garcia knew the combination. Frustrated, Charlie Pascual brought them back to the room. Charlie Pascual and his companions then took whatever valuables they could lay their hands on - dental stocks, dentures, and the like - and placed them inside a cardboard box and left.[5]

After the robbers had left, Renato Garcia and his son were released from the comfort room. Renato Garcia went to Juanito Garcia who was still lying on the floor. Blood was coming out from his mouth. With the help of a neighbor, Renato Garcia brought Juanito Garcia to the hospital. Juanito Garcia, however, was dead on arrival.[6]

Dr. Arturo Y. Da Jose, City Health Officer of Cabanatuan City, conducted an autopsy on the cadaver and found that the cause of death was "Cardio Respiratory Arrest Secondary Cerebral Hemorrhage" which may have been caused by severe emotional distress.[7]

Marina Gonzales, the surviving live-in partner of Juanito Garcia,[8] listed their losses due to the robbery at P100,700.00.[9]

As herein before stated, the sole issue raised in this appeal involves the credibility of witnesses. In this regard, the rule is well settled that where the issue is one of credibility of witnesses, appellate courts will not generally disturb the findings of the trial court unless said court has plainly overlooked certain facts of substance and value which, if considered, might affect the result of the case. Herein appellants failed to demonstrate that their case falls under the exception which would justify the Court to overturn the findings of fact of the trial court which are supported by documentary evidence and the testimony of witnesses who had no reason whatsoever to testify falsely against the appellants.

The appellants, through counsel, point to certain errors, inconsistencies and contradictions in the testimony of the witnesses for the prosecution, but these refer to minor details. Thus, it is claimed that the testimony of Flora Farfaran to the effect that the man who opened the door for her was Ernesto Calderon is inconsistent with her declaration that she did not recognize the person who opened the door for her because that was the first time she saw him. However, we find no contradiction in the two statements. When Flora stated that she did not recognize the person who opened the door for her because that was the first time she saw the man, Flora obviously meant that she did not know the name of the person who opened the door for her.

It is also claimed that the testimony of Flora Farfaran that she saw Carlito Pascual and Danilo Perez both holding handguns while Ernesto Calderon was armed with a knife during the robbery is inconsistent with her testimony that after Ernesto Calderon opened the door for her, Calderon pointed a gun at her. We find no serious contradiction in the foregoing statements. It may be that Ernesto Calderon armed himself with a gun when he responded to the knock or that Flora Farfaran thought that a gun was pointed at her.

It is further claimed that the testimony of Renato Garcia pointing to the appellants as the persons who robbed Juanito Garcia on 1 June 1984 is inconsistent with his sworn declaration (Exh. F) where he stated that he did not

recognize any of the robbers. We find, however, no contradictory statements. What Renato Garcia meant when he said that he did not recognize the robbers is that he did not know their names, so that he gave a description of the robbers, instead.

Minor discrepancies in the testimony of witnesses are but natural and to be expected. They enhance their credibility because these discrepancies indicate that the answers given are honest and unrehearsed.

The trial court correctly found the appellants guilty of the crime of Robbery with Homicide although it would appear that Juanito Garcia died of heart attack during the robbery. As former Chief Justice Ramon C. Aquino states: "It is immaterial that death supervened by mere accident as long as the homicide was produced by reason or on the occasion of the robbery, because it is only the result obtained, without reference or distinction as to the circumstances, causes or modes or persons intervening in the commission of the crime, that has to be considered." [10]

The penalty of reclusion perpetua imposed upon each of the appellants is, likewise, correct since the mitigating circumstance of lack of intent to kill is offset by the aggravating circumstance of Dwelling.

But, the trial court erred in ordering the appellants to pay the heirs of the victim, Juanito Garcia, only the amount of P100,700.00. This amount represents just the value of the property taken from the house of Juanito Garcia and Marina Gonzales. No indemnity was imposed for the death of Juanito Garcia. To this amount of P100,700.00, there-fore, should be added P30,000.00, as indemnity for the death of the said Juanito Garcia.

The trial court also erred in ordering the appellants to suffer subsidiary imprisonment in case of insolvency. With the amendment of Art. 39 of the Revised Penal Code by Republic Act No. 5465, subsidiary penalty applies only to non-payment of fines. And, before and after Republic Act No. 5465, there is no subsidiary penalty when the principal penalty meted out is higher than prison correctional.

The trial court further erred in ordering each of the appellants to pay only one-fourth (1/4) the amount decreed as indemnity, reserving the other one-fourth (1/4) to Bonifacio Domingo. The accused Bonifacio Domingo is yet to be tried of the offense so that it cannot be ascertained whether or not he is guilty of the offense charged and liable to pay indemnity to the offended party. Besides, the three (3) accused-appellants, being all principals, are under Article 110 of the Revised Penal Code, solidarily liable.

WHEREFORE, the judgment appealed from is hereby **AFFIRMED** with the modification that the herein defendants?appellants are sentenced to pay, jointly and severally, the heirs of the victim the amount of P130,700.00, without subsidiary imprisonment in case of insolvency. With costs.

SO ORDERED.

Melencio-Herrera, (Chairman), Paras, Sarmiento, and Regalado, JJ., concur.

[1] Original Record, pp. 1-2

[2] The accused Bonifacio Domingo alias "Poncing" is still "at large."

[3] Id., p. 109

[4] tsn of March 20, 1985, pp. 9-14

[5] tsn of November 21, 1984, pp. 3-5

[6] tsn of March 20, 1985, pp. 21-22

[7] Exhibit E; also tsn of March 20, 1985, pp. 4-6

[8] tsn of May 2, 1985, p. 8

[9] Exhibit G; also tsn of May 2, 1985, p. 5

[10] Aquino, Revised Penal Code, Volume 3, pp. 115-116

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