

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ANTONIO PAREJA, JOSE TOLEDO AND JOHN DOE, ACCUSED, JOSE TOLEDO, ACCUSED-APPELLANT.**

*G.R. No. 88043, December 09, 1996*

Ponente: PANGANIBAN, J.

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**PANGANIBAN, J.:**

Senseless killing takes on an almost blasé signification in the instant case, where the accused tried but failed to asport a TV set and ‘betamax’ machine, and instead ended up killing a defenseless person. Attempted robbery with homicide, committed in the name of a few mundane material goods. Unfortunately, this is no longer unusual or shocking nowadays, as it seems that life has become cheap. And that’s precisely what is so painfully tragic for all of us.

Together with Antonio Pareja and one John Doe, herein accused-appellant Jose Toledo was charged before the Regional Trial Court of Legazpi City, Branch 8, with the crime of attempted robbery with homicide in an information[1] which reads as follows:

"That on or about the 22nd day of November, 1986, in the City of Legazpi, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and helping one another, with intent of gain, being then armed with a knife and by means of violence and intimidation, did then and there willfully, unlawfully and feloniously enter the house of HENEROSO (should be ‘Generoso’) JACOB, by forcibly detaching the bamboo wall of the kitchen and once inside, threatened the occupants thereof and demanded for the video machine trade mark ‘betacord’, however Sabina Jacob grabbed the cloth covering the face of accused Antonio Pareja which caused the latter to scamper away together with the two other accused and on the occasion of said attempted robbery the accused Antonio Pareja, with intent to kill, willfully, unlawfully and feloniously stab (sic) said HENEROSO JACOB several times consequently inflicting injuries which directly caused his death; thus said accused commencing the commission of the crime of Robbery directly by overt acts and was (sic) not able to perform all the acts of execution which would have produced the felony by reason of some cause or accident other than their own spontaneous desistance. That there is present in the commission of the offense the aggravating circumstances of night time.

CONTRARY TO LAW."

At his arraignment on June 23, 1987, appellant Toledo pleaded not guilty to the charge.[2] His two co-accused have remained at large.

**The Facts**

**According to the Prosecution**

The family of 54-year-old Generoso Jacob[3]resided in a one-bedroom house in Pawa, Legazpi City. At around 2:00 o’clock in the morning of November 22, 1986, Generoso was asleep on a folding bed in the kitchen, three steps below the living room where his wife Amada, and their children Shirley, Alberto, Marlene and Sabina were sleeping.

A six-and-a-half feet high partition separated the living room from the 2 x 3 meters bedroom which was lighted by a 50-watt bulb. Asleep in the bedroom. About four meters away from the kitchen, were Generoso's daughter Emelita, her husband Romeo Ramirez, and their baby Marlon.

Kept in the said bedroom was a 14" Sanyo color TV which had been brought from Saudi Arabia by Generoso's son, Rafael. In the living room was a 'betamax' with three components.

The family was roused from sleep by shouts of "Gising kayo, huwag sumigaw!" three masked intruders had gained entry into the house. Amada saw one of them asking Sabina for the betamax. The same fellow tried to lift and carry off the machine but it proved to be too heavy for him. Almost without thought, Sabina snatched off his mask and recognized him to be Antonio Pareja, who used to frequent their house and take lunch at Emelita's store, as he was even one of Emelita's gangmates.[4] The latter tried to stab Sabina but she evaded the thrust and swiftly jumped out the window.[5]

Emelita was awakened by her father's cries of "tabangi ako nindo" ('please help me'). Instinctively, Emelita also screamed for help from their neighbors, but one of the robbers poked a white-and-gold colored gun at her "sentido" (temple), and neither she nor her husband could lift a finger. The gunwielder's face was covered by a t-shirt, except for his nose. Incidentally, Emelita recognized the T-shirt to be hers, which she had left hanging on the clothesline outside the house. The man uttered. "Huwag kayong sisigaw kung ayaw ninyong mamatay, nasaan yung TV?" When she answered, "diyan," the man tried to lift the television set. Failing to do so, he called out, "Ger, tulungan mo ako." But no one responded to his call. While he was thus distracted, Emelita grabbed at the T-shirt and un-masked him, thus recognizing him to be herein appellant Toledo. She thus confirmed her earlier suspicion about his identity based on his body build and voice.[6] As the neighbors were starting to respond to her cries for help, the trio fled empty-handed.

Hearing her husband's moans, Amada went to the kitchen, where she saw Generoso lying in a pool of blood on the cemented floor. She embraced him but he merely looked at her, tried to open his mouth and expired.[7] He had bled profusely from the wound on his chest.

Generoso was autopsied at the Funeraria Oro by Dr. Cesar Chua of the Albay Provincial Hospital, who found that the victim sustained a 2-cm. penetrating stab wound at the level of the nipple, left parasternal line; a 2-cm. incised wound at the pulmonary arterial trunk; another 1 cm. incised wound at the outlet of the right ventricle, and hemoperitoneum.[8] Dr. Chua opined that Generoso's wounds could have been caused by only one sharp pointed and long instrument.[9]

A police photographer took pictures of the damaged bamboo portion of the kitchen used for drying dishes,[10] which the robbers detached in order to gain entry into the house.

#### The Defense's Version

In his own defense, appellant interposed alibi. He swore that in the "evening of November 22, 1986," he attended the wake of Nerry Armario in Bogtong, Legazpi City, and he stayed there until "past 3:00 o'clock early morning of the following day." [11] Santos Armario testified that his wife Nerry died on November 22, 1986 and that at around 9:00 o'clock that evening, appellant arrived at his house where he stayed until "early morning of November 23, 1986." [12] Armando Armario and Eduardo Armario both testified that appellant arrived for the wake "more or less nine in the evening of the same day." [13]

The defense also presented the victim's daughter Sabina as their witness. She swore that of the three robbers, she was able to recognize only Antonio Pareja. She failed to see the other two culprits because one was in the bedroom and the other was in the kitchen while she was in the sala because held at knifepoint by Antonio Pareja.

She affirmed that pareja indeed had two companions during that incident.

#### The Trial Court's Ruling

On March 6, 1989, the trial court[14] rendered its Decision[15] holding that appellant's denial and alibi could not prevail over the positive identification by Emelita of appellant himself and Antonio Pareja as the malefactors, adding that there was no reason at all for Emelita to unjustly and falsely finger appellant as one of the culprits. The court a quo opined that, although it may have been true that appellant did attend the wake in Bogtong, it was however not impossible for him to have left the wake with two companions to commit the crime in nearby Pawa. While pointing out that it was Antonio Pareja "who was responsible for inflicting the fatal injuries" upon the victim, the trial court ruled that appellant "should like-wise be held equally liable" for the death. If thus disposed of the case as follows:

"WHEREFORE, the prosecution having proved the guilt of accused beyond reasonable doubt Jose Toledo is hereby convicted of the offense charged, and is sentenced to reclusion perpetua, with all the accessory penalties provided by law and to pay the costs. Accused Jose Toledo is moreover ordered to indemnify the heirs of the late Heneroso Jacob in the amount of P30,000.00.

Accused Jose Toledo, who has been under detention since April 29, 1987, is given full credit for his preventive imprisonment.

SO ORDERED."

#### Errors Assigned

In this appeal, appellant assigned the following errors:

"The trial court erred in holding that there was a clear and positive identification of Jose Toledo by the prosecution witnesses as one of the authors of the crime.

The lower court erred in not acquitting the accused-appellant Jose Toledo on reasonable doubt."

Appellant contends that prosecution witness Amada Jacob failed to place him at the scene of the crime on account of her admission to the police that she could not identify the two companions of Antonio Pareja. Neither could she have seen appellant inside the bedroom where he was supposed to have threatened Emelita, because of the partition between the bedroom and the living room. Moreover, appellant highlights that variance in the testimonies of Emelita and her mother regarding the weapon used by appellant in threatening the former, with Emelita swearing that it was a knife and Amada affirming that it was a gun. Appellant also claims that it was highly unlikely that Emelita would have the courage to suddenly remove the mask from his face, on account of the gun pointed at her head, and considering that her husband could not even do anything under the circumstances. Lastly, appellant emphasizes the fact that Sabina, one of the victim's daughters, failed to identify the other assailants apart from Antonio Pareja.

#### The Court's Ruling

##### Positive identification

Very telling is the fact that appellant does not even discuss Emelita's testimony establishing his presence at the crime scene, notwithstanding that it was Emelita whom he confronted and threatened and who pulled off his mask inside the well-lighted bedroom. Appellant was no stranger to the Jacob family; in fact, they were familiar with his build and his voice, since he frequented their home when peddling fruit juices and homemade chocolates in Pawa.[16] Considering these circumstances, in the absence of proof that she had any bias or ill-motive against appellant, Emelita's sole identification of appellant as one of the three intruders in the Jacob residence stands completely unscathed. Consequently, such identification suffices to obtain conviction even in the absence of

corroboration.[17] Besides, it would be unnatural for the relatives of the victim who seek justice to commit an injustice by imputing the crime to innocent persons and not those who were actually responsible therefor.[18]

As regards the variance in the testimonies of Emelita and her mother Amada concerning the type of weapon used by appellant in threatening the former, such alleged inconsistency is insignificant as it refers only to a minor detail. Rather than eroding the credibility of their testimonies, such difference in fact constitutes a sign of veracity.[19] It is a well-recognized fact that witnesses testifying about the same nerve-wracking event can hardly be expected to be correct in every detail nor consistent with other witnesses in every aspect, considering the inevitability of differences in their perception, recollection, viewpoint or impressions, as well as in their physical, mental, emotional and psychological states at the time of reception and recall of such impressions. After all, to begin with, no two individuals are alike in terms of powers of observation and of recall. Total recall or perfect symmetry is not required as long as witnesses concur on material points.[20]

We are also unpersuaded by appellant's contention that it would have been well nigh impossible for Emelita to have the courage to snatch the mask off his face when she was being held at gunpoint, and considering that her husband did not even dare lift a finger. While it is true that people faced with danger usually become passive and submissive, it is equally true that there are some people who are emboldened in sudden or impulsive reaction to a frightening experience. Different persons have different reactions to similar situations. Man's behavior and reactions can never be stereotyped.[21] In the same vein, it is not improbable or unusual for victims of or witnesses to crimes or startling events to strive to recognize the culprits and observe the manner of commission of the crime.[22]

Appellant also relies on the testimony of Sabina Jacob that she could not identify the two associates of Antonio Pareja. This contention cannot be taken seriously. A careful reading of Sabina's testimony shows why she was able to identify only Antonio Pareja -- she focused her full attention on him as he was the one with her in the living room.[23] Moreover, her statement that she was not able to identify the other two intruders -- one of whom was in the bedroom and the other in the kitchen -- in no way implied that he (Jose Toledo) was not among the three malefactors.

#### Alibi

As regards appellant's alibi, the Court has time and again ruled that alibi is the weakest of defenses because it is easy to fabricate but difficult to prove. It cannot prevail over the positive identification of the accused by witnesses. For the defense to prosper, the requirements of time and place (or distance) must be strictly met: It is not enough to prove that the accused was somewhere else when the crime was committed; he must also demonstrate by clear convincing evidence that it was physically impossible for him to have been at the scene of the crime during its commission.[24]

In the case before us, such physical impossibility had not been proven, and in fact, quite the opposite was shown. According to Fiscal Fidel Sarmiento, the distance between Pawa and Bogtong, which are adjacent barangays, could be negotiated in ten to twenty minutes by crossing the river; and appellant admitted that in travelling between Bogtong and Pawa to peddle his wares, he would usually cross the river instead of passing through San Joaquin.[25] Even the corroborative testimonies of appellant's drinking partners at the wake[26] are rendered valueless on account of the ease of going back and forth between the two barangays, as well as in light of appellant's positive identification by prosecution witnesses as one of the interlopers in the Jacob abode.

#### Non-Flight?

Moreover, the mere fact that, according to his companions at the wake, appellant did not flee the crime scene, may not be deemed as indicative of his innocence.[27] There is no law or dictum holding that non-flight of an

accused is conclusive proof of innocence.[28]

#### Credibility of Witnesses

On the whole therefore, appellant's guilt hinges on the issue of credibility. This Court has repeatedly said that the task of assigning values to declarations on the witness stand is best and most competently performed by the trial judge who, unlike appellate magistrate, can weigh such testimonies in light of the declarant's demeanor, conduct and attitude at the trial and is thereby placed in a more competent position to discriminate between the true and the false. The rule holds firmly especially where, as in this case, the appellant failed to show any fact of substance which the trial court might have overlooked that, when considered, may affect the result of the case.[29] No such fact obtains in this case.

It is beyond dispute that the trial court correctly found appellant guilty beyond reasonable doubt of the crime of attempted robbery with homicide as defined in Art. 297 of the Revised Penal Code. Robbery was the intended purpose of the intruders' trespass into the residence of the Jacobs. Generoso Jacob's killing was on the occasion of a robbery which, however, was not consummated.

The failure to cart away the goods due to their weight (something the culprits had not taken into account) may not be considered as voluntary desistance from the commission of the crime so as to remove the element of asportation from the complex crime charged. Such failure to consummate the robbery was not caused solely by their own volition and inabilities. It was likewise brought about by factors such as their unmasking and the arrival of neighbors who responded to Emelita's shouts for help. These circumstances forced them to flee, leaving behind the objects.

Appellant is liable for attempted robbery with homicide even if he was not himself the author of the killing of Generoso Jacob, for lack of evidence showing that he endeavored to prevent such slaying. Thus, the general rule applies that whenever homicide is committed on the occasion or as a consequence of robbery, all those who took part as principals in the robbery shall be held guilty of the special complex crime of robbery with homicide although they did not actually take part in the homicide.[30] The same principle applies even if the crime committed is attempted robbery with homicide.[31] Pursuant to Art. 297 of the Revised Penal Code, the crime charged and proven in this case carries the penalty of reclusion perpetua in its maximum period to reclusion perpetua "unless the homicide committed shall deserve a higher penalty." Said penalty is imposable in this case, there being no ground to apply the exception mentioned in the article.

The aggravating circumstance of nighttime alleged in the Information was not conclusively proven. For nocturnity to be considered as such circumstance, it must have been particularly sought by the accuse or taken advantage of by him to facilitate the commission of the crime or to ensure his immunity from capture,[32] or otherwise to facilitate his getaway.

Nonetheless, we find that the aggravating circumstance of dwelling had been duly proven. Although dwelling (morada) is considered as inherent in crimes which can only be committed in the abode of the victim, such as trespass to dwelling and robbery in an inhabited house, it has been held as aggravating in robbery with homicide because the author thereof could have accomplished the heinous deed of snuffing out the victim's life without having to violate his domicile.[33] Hence, in view of this aggravating circumstance, the penalty imposable upon appellant shall be reclusion perpetua.[34] In conformity with prevailing jurisprudential law,[35] indemnity for the death of Generoso Jacob shall be increased to P50,000.00.

WHEREFORE, the challenged Decision finding appellant Jose Toledo guilty beyond reasonable doubt of the crime of attempted robbery with homicide is hereby **AFFIRMED**, subject to the modification that he shall indemnify the heirs of Generoso Jacob in the sum of fifty thousand pesos (P50,000.00).

Let a copy of this Decision be furnished the Philippine National police and the National Bureau of Investigation which are herewith instructed to effect with dispatch the arrest of Antonio Pareja in order that he too may stand trial for the crime charged and duly proven here.

**SO ORDERED.**

Narvasa, C.J. (Chairman), Davide, Jr., Melo and Francisco, JJ., concur.

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[1] Record, p. 1.

[2] Record, p. 26

[3] Exhs. A & B.

[4] TSN, October 22, 1987, p. 18.

[5] TSN, September 29, 1987, p. 19, and TSN, January 11, 1989, p. 4.

[6] TSN, October 22, 1987, p. 12.

[7] TSN, September 29, 1987, p. 20.

[8] Exh. A.

[9] TSN, July 18, 1988, pp. 10-11.

[10] TSN, October 22, 1987, p. 19; Exh. F-1.

[11] TSN, November 10, 1988, pp. 2-3.

[12] TSN, November 22, 1988, pp. 3-5.

[13] Ibid., p. 9; TSN, December 16, 1988, p. 4.

[14] Presided by Judge Emmanuel S. Flores.

[15] In Criminal Case No. 3827; rollo, pp. 22-26.

[16] TSN, October 22, 1987, p. 12, and TSN, August 18, 1988, pp. 9-10.

[17] People vs. Torres, 232 SCRA 32, April 28, 1994.

[18] People vs. Estrellanes, Jr., 239 SCRA 235, December 15, 1994.

[19] People vs. Mendoza, 236 SCRA 666, September 22, 1994.

[20] People vs. Cruza, 237 SCRA 410, October 7, 1994.

[21] People vs. Pandiano, 232 SCRA 619, May 30, 1994; People vs. Balisteros, 237 SCRA 499, October 7, 1994.

[22] People vs. Dolar, 231 SCRA 414, March 24, 1994.

[23] TSN, January 11, 1989, p. 3.

[24] People vs. De Leon, 248 SCRA 609, September 28, 1995; People vs. Escoto, 244 SCRA 87, May 11, 1995; People vs. Cabresos, 244 SCRA 362, May 26, 1995.

[25] TSN, November 10, 1988, p. 8.

[26] They all testified that appellant was in the Armario residence for the wake from 9:00 o'clock in the evening of November 22, 1986 until the wee hours of the morning of November 23, 1986. It should be noted that the information charges that the crime was committed "on or about the 22nd day of November, 1986." This is supported by the testimonies of Amada Jacob (TSN, September 29, 1987, p. 8), Emelita Jacob-Ramirez (TSN, October 22, 1987, p. 4) and Sabina Jacob (TSN, January 11, 1989, p. 2) that the crime transpired at around 2:00 o'clock in the morning of November 22, 1986. However, the autopsy report dated November 24, 1986 (Exh. A) states that the autopsy was conducted at 11:00 a.m. of November 23, 1986 while the death certificate indicates the date to death of the victim as November 23, 1986 (Exh. B-3).

[27] People vs. Inocencio, 229 SCRA 517, January 27, 1994.

[28] People vs. Desalisa, 229, SCRA 35, January 4, 1994.

[29] People vs. Federico, 247 SCRA 247, August 14, 1995; People vs. Gomez, 229 SCRA 138, January 6, 1994; People vs. Lase, 219 SCRA 584, March 5, 1993; People vs. Camaddo, 217 SCRA 162, January 18, 1993.

[30] People vs. Cobre, 239 SCRA 159, December 13, 1994; People vs. Calegan, 233 SCRA 537, June 30, 1994; People vs. Yabut, 226 SCRA 715, September 27, 1993.

[31] See: People vs. Dalanon, 237 SCRA 607, October 14, 1994, where two of the four persons charged with attempted robbery with homicide were at large while one of the two who were tried did not appeal his conviction. The Court affirmed the judgment of conviction as to the appellant therein.

[32] People vs. Marra, 236 SCRA 565, September 20, 1994.

[33] People vs. Mesias, 199 SCRA 20, 27, July 9, 1991, citing People vs. Pecato, 151 SCRA 14, June 18, 1987; People vs. Capillas, 108 SCRA 173, October 23, 1981; People vs. Mercado, 97 SCRA 232, April 28, 1980; People vs. Apduhan, Jr., 24 SCRA 798, August 30, 1968.

[34] See Arts. 65 & 64(3), Revised Penal Code.

[35] People vs. Adonis, 240 SCRA 773, January 31, 1995; People vs. Logronio, 214 SCRA 519, October 13, 1992; People vs. Serdan, 213 SCRA 329, September 2, 1992.

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