

PEOPLE OF THE PHILIPPINES, PETITIONER, VS. DESIDERIO SALAZAR Y DACANAY, RUELITO TOBIAS Y RUIZ, RESPONDENTS.

G.R. No. 88665. January 23, 1992

Ponente: CRUZ, J.

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CRUZ, J.:

Merly Andrade had a live-in partner, and she betrayed him. She also had two partners in crime, and she betrayed them too. Now the first is dead and the other two are in jail.

The victim was Marcelino Espayos, a 72-year old man, whose lifeless body was found in Tala, Caloocan City, on April 14, 1987.[1] Autopsy revealed that he had died the night before as a result of massive hemorrhage caused by a stab wound in his chest.[2]

Andrade was the principal suspect as the deceased man's paramour. Upon questioning by the police, she confessed her participation in the crime and implicated Desiderio Salazar and Ruelito Tobias.[3] The three of them were subsequently charged with robbery with homicide before the Regional Trial Court of Caloocan City. At their arraignment, they all pleaded not guilty.

At the start of the trial, Andrade was called by the prosecution as a hostile witness and testified on the details of the attack on Espayos.[4] Subsequently, her testimony was stricken off on motion of the defense on the ground of self-incrimination.[5] After extensive debate, the motion of the prosecution to discharge her as a state witness was granted over the vigorous objection of the defense.[6] She then testified again, repeating substantially her previous narration on the stand.[7]

Andrade was a waitress-hostess at the Betty's Beer House at Tala, Caloocan City, at the time of the incident in question. According to her, the accused-appellants talked to her in the evening of April 13, 1987, and told her they were going to rob Espayos of his ring and wristwatch. They demanded that she accompany them and she obeyed because she felt threatened. At about nine o'clock, the three of them left the beer house and proceeded to Espayo's hut on Barracks street. They espied their quarry on the way and the two accused-appellants followed him while Andrade lagged behind. When they overtook him, Tobias hit Espayos on the thigh with a piece of wood and Salazar stabbed him in the chest. The two then divested Espayos of his wristwatch, ring and wallet as he lay slumped on the ground. Afterwards they fled. Andrade could not help the fallen man and so left him alone and returned to the beer house, where Salazar and Tobias arrived later and gave her P150.00. She remained there until seven o'clock the following morning, then went to the Rainbow Beer House where she met her friend Yolly and four men. The group went to Novaliches where they had breakfast. She told no one about the killing of Espayos. It was in the afternoon of that day that she was picked up by the police for questioning. While admitting participation in the attack on Espayos, she stressed that she agreed only to robbing him but did not know that Salazar and Tobias intended to kill him.

Two pork barbecue vendors, Rodolfo Montañez and Antonio Montañez, corroborated her testimony.[8] They swore they saw the accused-appellants enter the Betty's Beer House at about seven o'clock and then leave with

Andrade at about nine o'clock in the evening of April 13, 1987.

For their part, the accused-appellants offered the defense of alibi, both testifying that from six to eleven o'clock in the evening of April 13, 1987, they were at a drinking session in the house of Orlando Laquian at NHA, Tala Estate, also in Caloocan City, to celebrate his fish harvest earlier that afternoon.[9] They were supported by Laquian himself, who swore that the two were indeed in his house at that time, together with several others, including a policeman.[10] Noel Liwag, another defense witness, also declared under oath that he was in the same party and saw both Salazar and Tobias there.[11]

The entire trial was conducted by Judge Alicia V. Sempio-Diy, who was later appointed to the Court of Appeals. Judge Felix S. Caballes took over the case and on the basis of the record rendered a well-written decision disposing as follows:

WHEREFORE, The Court finds the accused DESIDERIO SALAZAR y DACANAY and RUELITO TOBIAS y RUIZ, guilty beyond reasonable doubt as principals by direct participation in conspiracy with each other, of the special complex crime of robbery with homicide, and they are hereby sentenced to suffer and undergo imprisonment of reclusion perpetua; to jointly pay Efren Espayos the sum of P3,000.00 as actual damages and also to pay solidarily the heirs of Marcelo Espayos civil indemnity in the amount of P30,000.00, without subsidiary imprisonment in case of insolvency, and to pay the costs.

The accused-appellants now fault the trial court for finding that they had been positively identified despite the material inconsistencies in the testimony of Merly Andrade. Their contention is that they should not have been convicted as charged because their guilt had not been proved beyond reasonable doubt.

The mainstay of the defense is the fact that when Andrade testified at the initial hearing held on June 24, 1987, and also in her affidavit dated April 14, 1987, she pointed to Tobias as Salazar and to Salazar as Tobias. It is argued that the inconsistency clearly showed her unreliability as a witness and cast the reasonable doubt that should have resulted in the acquittal of the accused-appellants.

That testimony was, however, stricken off the record in the order of the trial court dated August 11, 1987, after it determined that it was violative of her right against self-incrimination;[12] and as for the affidavit, it had no evidentiary value because it was taken from Andrade without the assistance of counsel, in violation of the Bill of Rights.[13] On April 26, 1988, testifying later as a state witness, Andrade corrected her earlier confusion and categorically identified Tobias as the one who hit Espayos with a piece of wood and Salazar as the one who stabbed the victim. She explained she had erred earlier because she did not know the accused-appellants very well and had met them only a few times before the incident.

The evidence shows that the accused-appellants had conceived their conspiracy as early as two days before, and were acting in concert when they killed and robbed Espayos on the night of April 13, 1987. It therefore did not matter what their respective roles were in the commission of the offense because the act of one was the act also of the other, regardless of which of them actually stabbed their victim to death.[14] What really mattered is that they were both positively pinpointed by Andrade as the persons who attacked Espayos, whatever their respective names were. In fact, it was not even necessary for her to identify them by name because what she did was more convincing, to wit, she approached each of them during the trial and informed the court that they were the two persons who killed and robbed Espayos.[15]

In *People v. Auditor*,[16] which involved a similar question, Justice Hugo E. Gutierrez, Jr. declared for the Court:

The appellants allege in their second assignment of error that the identities of Aparece and Alvarez were not proved beyond reasonable doubt. They base this assigned error on the fact that Lucio Dumo when asked to point

at Parece, pointed to Alvarez, and when asked to point at Alvarez, pointed to Aparece. They also stress Rogelio Undag's testimony which shows that Aparece and Alvarez were standing about a meter from Takiang, holding the pieces of wood without using them during the incident.

The error of the witness was in the names of the two accused and not in regard to their having been among the perpetrators of the crime. Admittedly, the eyewitnesses were not familiar with Aparece and Alvarez who were employed by the Auditor family to work on their farm. However, it is not the ability of an eyewitness to give the true and correct names of the accused which is important. What matters is their identification as persons who were seen actually committing the offense.

The defense points to other improbabilities, e.g., that Andrade could not have seen the attack because she said "the place was very dark"; that she said the crime occurred from 9 o'clock in the evening of April 13 until 1:30 o'clock the following morning, and that after her paramour had been killed, she apparently showed no remorse or concern and enjoyed herself with her friends until the early morning as if nothing had happened.

Such testimony may be explained by the persona of Andrade herself, who was not exactly a paragon of virtue or intelligence. She was 22 years old at the time the crime occurred and was a live-in partner of a married man almost three times her age. She was an illiterate who said she had reached only Grade 2 (although she said later it was Grade 3).[17] Her minimal education did not improve her apparently low intelligence nor was her character enhanced by the nature of her work and the company she kept.

Given these disadvantages, she was apt to be erratic in her conduct after the killing of her paramour before her very eyes and hazy in her remembrance of that traumatic event. She obviously meant that the crime began from the time that she and the accused-appellants left the Betty's Beer House at 9 o'clock that night although it is not clear why she said it ended at 1:30 the next morning. She did say that the place was dark, but only on the way back, because she also said there was an electric bulb that enabled her see how the crime was committed.[18] There is also her curious behavior after the crime that made the trial judge wonder over her seeming callousness. (which she attributed to her "confusion.") Nevertheless, all this did not detract from the essential veracity of her testimony and could not belie the fact that Salazar and Tobias planned and executed the robbery and murder of Espayos in substantially the way she related it.

The alibi of the accused-appellants must fail against their positive identification by Andrade as the perpetrators of the crime. Even assuming that they did attend the party at Laquian's house, they have not shown that it was impossible for them to leave it to commit the offense and return thereto later, all during the period they claimed they were drinking with their friends. Laquian's house is also in Caloocan City and not far from the place where the crime was committed.[19]

We are convinced that in conspiracy with each other, Salazar and Tobias killed Espayos in cold blood that night of April 13, 1987, and robbed him of his wristwatch, ring and wallet as he lay dead or dying on the ground. We affirm the finding of the trial court that the accused-appellants are guilty beyond reasonable doubt of the complex crime of robbery with homicide for which they should be sentenced to the penalty of reclusion perpetua. As there is no evidence of the value of the articles taken from him, the trial court was correct in basing the actual damages only on Andrade's testimony that Espayos had at that time P3,000.00 cash, which has not been refuted.[20]

The circumstances of this case are rather disturbing, viz., a 22-year old hostess having an illicit affair with a married 72-year old man and two men not yet in their thirties who cold-bloodedly planned and executed his murder for the watch and ring he was wearing, to be denounced later by their erstwhile co-accused, who had gone merry-making after the killing with apparently not a care in the world. These are worrisome symptoms, indeed, of a troubled and deteriorating society.

WHEREFORE, the appeal is DISMISSED, and the challenged decision AFFIRMED, with the modification that the civil indemnity shall be increased to P50,000.00. It is so ordered.

Narvasa, C.J., Griño-Aquino, and Medialdea, JJ., concur.

[1] TSN, July 28, 1987, p. 13.

[2] Records, p. 294.

[3] Ibid., pp. 20-21.

[4] TSN, June 24, 1987, pp. 12-14.

[5] Records, pp. 87, 94.

[6] Ibid., p. 221.

[7] TSN, February 2, 1988.

[8] TSN, November 24, 1987; January 27, 1988.

[9] TSN, June 21, 1988, pp. 2-3; August 17, 1988, pp. 3-4.

[10] TSN, July 6, 1988, pp. 2-3.

[11] TSN, August 16, 1988, p. 5.

[12] Records, p. 94; Chavez v. Court of Appeals, 24 SCRA 663.

[13] Constitution, Article III, Section 12(1).

[14] People vs. Bartulay, 192 SCRA 621; People vs. Sazon, 189 SCRA 700; People vs. Salvador, 163 SCRA 574.

[15] TSN, June 24, 1987, pp. 8, 14; February 2, 1988, p. 7; April 26, 1988, pp. 5-6.

[16] 152 SCRA 613.

[17] TSN, June 24, 1987, p. 28; February 2, 1988, p. 8.

[18] TSN, June 24, 1987, p. 27; April 20, 1988, p. 15.

[19] TSN, June 21, 1988, p. 3.

[20] TSN, June 24, 1987, p. 29.

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