

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. BERTO IRAN ALIAS "BERTONGKOY", JOHN DOE AND PETER DOE, ACCUSED-APPELLANTS.

G.R. No. 88915. December 14, 1992

Ponente: MELO, J.

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MELO, J.:

This has reference to the appeal of accused-appellant Berto Iran, also known as "Bertongkoy", from the judgment of Regional Trial Court of the Seventh Judicial Region (Cebu City, Branch 19) convicting him, together with a John Doe and a Peter Doe, of the special complex crime of Robbery with Homicide in Criminal Case No. CBU-11161.

The Information dated June 30, 1987 against accused-appellant and the two unidentified Does reads:

"That on or about the 11th day of June, 1987, between 7:00 and 8:00 p.m., in the City of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the said accused, armed with bladed instruments, conspiring, confederating and mutually helping one another, with intent of gain and by means of violence and intimidation upon Astroluna Castro, who was then in her dwelling at General Echavez Street, Cebu City, did then and there take, steal and carry away her personal properties, to wit:

1. one (1) VHS worth \$800 or its equivalent ----- P16,000.00
2. one (1) Seiko lady's watch 1,200.00

in the total amount of SEVENTEEN THOUSAND TWO HUNDRED PESOS (P17,200.00); that in the commission of robbery, homicide has been committed in that said accused did then and there stab, attack and assault Astroluna Castro, inflicting upon her the following physical injury:

'STAB WOUND, (L) SUPRACLAVICULAR REGION'

which caused her death.

CONTRARY TO LAW." (pp. 6-7, Rollo.)

Upon his arraignment, Iran, assisted by his counsel, entered a plea of "NOT GUILTY". The two unidentified Does could not be arraigned for they were then, as they continue to remain up to the present time, at large. Thus, trial ensued only against accused-appellant Berto Iran.

The prosecution's narration of facts was summarized in the brief submitted by the Office of the Solicitor General, as follows:

"1. At about 5:00 o'clock in the afternoon of June 11, 1987 ten-year old Raymond Duran was playing at a roadside basketball court with some friends, namely, Norman Aring, a certain Gabriel and one Derek. The court where the children were playing fronted the house of Astroluna Castro, a 70 year old woman, on General Echavez St., Cebu

City (pp. 14-18, TSN, December 28, 1987).

The children, who were still at the basketball court at around 7:00 p.m., overheard a conversation between appellant 'Berto Iran' and a certain Jack, a teenager who lived nearby. Appellant, known to the children by the nickname 'Bertongkoy', asked Jack the whereabouts of Percival 'Sonny' Castro (the son of Astroluna Castro) whereupon Jack answered that Sonny was not at home (pp. 20-22, Ibid.). Shortly thereafter, Raymond Duran saw appellant clamber over the wall of and into the Castro premises, and so did the other boys. Norman Aring even climbed the fence, by stepping in the holes thereon, to see where appellant had gone (pp. 13-16, TSN, Jan. 7, 1988; p. 2, Decision, March 27, 1980).

2. At about 9:30 o'clock of the same evening, Eduardo Rusiana, a neighbor of the Castros, came out of the house of Alejandro Caballero, also on Echavez Street, where a party was being held, to answer the call of nature. While Rusiana was thus at the side of the road, appellant approached Rusiana and requested him to check on Mrs. Castro at her house and find out how she was or if she was still alive. Startled by the request, Rusiana asked appellant the reason, whereupon appellant answered that he had gone up the Castro house but had stabbed Mrs. Castro upon being seen by her. Immediately, however, appellant hied away and left Rusiana (pp. 9-11, TSN, Oct. 9, 1987).

Puzzled by the request of appellant, Rusiana returned to the Caballero house and asked Nelson Duran, one of the guests, to accompany him to the Castro house, which was about 3 or 4 houses away, to verify the disclosure of appellant. On their way there, they saw a niece of Mrs. Castro who lived nearby and asked her also to accompany them. Trembling and afraid, the niece, a Miss Medalla, went with them to the house of her aunt (pp. 11-16, TSN, Oct. 9, 1987). From there, Eduardo Rusiana went to look for Sonny Castro. Upon being told by Rusiana of his conversation with appellant, Sonny Castro rushed back to their Castros' house (pp. 21-22, Ibid.).

3. At the 'dirty kitchen' of their house, Sonny Castro found his mother dead on a rattan bed; half naked and hogtied with a cord from an electric iron. Shocked, Sonny Castro held on to his mother, and gave vent to tears. Later on, when he had regained his composure, Sonny Castro checked the contents of their house and found that a VHS video machine was missing from its usual place in the living room and that his mother's Seiko brand lady's watch was also missing from her bedroom (pp. 8-10, 13, TSN, Sept. 14, 1987).

4. From the day of Mrs. Castro's killing until July 7, 1987, searches for and inquiries as to the whereabouts of appellant proved fruitless as he was nowhere to be found. On July 7, 1987, however, the police received an anonymous tip that appellant was hiding in Banilad, Cebu City. On July 8, 1987, a police team arrested appellant at the Maria Luisa Village residence of his sister-in-law. At first, accused denied that he was Berto Iran. Later, however, he admitted that he was. Upon his arrest, a body search was conducted and produced an icepick concealed at appellant's waist bank (pp. 9-10, 18, 27-28, TSN, Nov. 25, 1987)." 9pp. 4-7, Appellees' Brief.)

The evidence for the defense which rests on alibi and denial was summarized by the trial court as follows:

"On May 25, 1987, the accused (who is now 22 years old) went to Bogó, Cebu to attend the fiesta thereof which was to take place on May 27, 1987. While there he attended the day and night activities.

On June 10, 1987, he went to his cousin's place to attend the birthday of Vicente Tirana. The party started at 7:00 o'clock in the evening to 5:00 P.M.

On June 11, 1987, he was at Pulang-bato (a barangay of Bogó) catching fish, using hook and line, together with Vicente Tirana, Stephen Crisostomo, Siasoy Dequigan and Bobon Megabon. They cooked the fishes they caught and ate them. It was about 8:00 o'clock in the evening of that day when they were through.

At a little after 11:00 P.M. of June 11, 1987, the police came to the house of the parents of the accused at Echavez

Street. Such house is only about a hundred meters from the house of Castro. The police then asked Graciano Iran, the father of the accused, where the latter was and also informed Graciano that the accused was the suspect of the killing of Castro. Graciano told the police that the accused was not there. He however did not tell the police that the accused was in Bogo.

The police then went upstairs and searched the house for about five minutes. Not able to find the accused, the policemen left.

On June 21, 1987, the accused came back from Bogo. His father then advised him not to help them in selling barbecue at Colon Street because the policemen were looking for him because of the killing of Castro. Upon his father's advice the accused stayed in the house of his sister-in-law at Maria Luisa Village in Banilad, Cebu City starting on that very day.

On July 8, 1987, the police arrested him at Banilad at the house of his relative, close to the house of his sister-in-law. Pointing a .38 caliber revolver on his head a policeman told him that he was a 'Sparrow' or an NPA member. It was only at the Police Station at Ramos Supermarket where he was told that he was the suspect of the Castro killing and of the robbery of the video machine and of the wrist watch.

It is not true that he requested Eduardo Rusiana in the evening of June 11, 1987 to see if Castro was still alive in her house. Neither is it true that an icepick was taken from him by the police." (p. 186, Record; p. 28, Rollo.)

The trial court rejected the version of the defense and accordingly pronounced its verdict of conviction thus:

"WHEREFORE, the Court finds and so holds the accused BERTO IRAN guilty beyond reasonable doubt of the crime of robbery with homicide and accordingly sentences him to suffer the penalty of Reclusion Perpetua with all the accessories of the law; to indemnify the heirs of Astroluna Castro the sum of P30,000.00 without subsidiary imprisonment in case of insolvency and to pay the costs.

"SO ORDERED."

(p. 190, Record; p. 32, Rollo.)

Hence, the appeal now before Us which We find devoid of merit.

Accused-appellant was convicted on the basis of circumstantial evidence, no eyewitness to the actual robbery and killing having been presented by the prosecution. The rule in this regard is that circumstantial evidence is sufficient to convict if: (1) there are more than one circumstance; (2) the facts from which the inferences are derived are proven; and (3) the combination of all the circumstances is such as to produce a conviction beyond a reasonable doubt. (Sec. 5, Rule 133, Revised Rules of Court, now Sec. 4, Rule 133, Revised Rules on Evidence; *People vs. Modesto*, 25 SCRA 36 [1968]; *People v. Pedrosa*, 169 SCRA 545 [1989]; *People vs. Navarro*, 169 SCRA 861 [1989]; *People vs. Madriaga IV*, 171 SCRA 103 [1989]; *People vs. Layuso*, 175 SCRA 47 [1989]; *People vs. Pinzon*, 206 SCRA 93 [1992]). Although no general rule has been formulated regarding the quantity of circumstantial evidence which will suffice for any case, all that is required is that the circumstances proven must be consistent with each other; consistent with the hypothesis that the accused is guilty and at the same time inconsistent with any other hypothesis except that of guilt (*People vs. Contante*, 12 SCRA 653 [1964]); *People vs. Cañada*, 12 SCRA 9 [1964]).

In the case at bar, the circumstantial evidence adduced by the prosecution sufficiently satisfies the quantum of proof necessary for conviction. As correctly found by the trial court, the following circumstances proven by the prosecution point to accused-appellant as the perpetrator of the crime:

"1. that at about 7:00 P.M. of June 11, 1987 the accused asked Jack, in the immediate vicinity of Astroluna Castro's house, where Percival (Sonny) Castro was. This is an antecedent circumstance which established that the accused had a plan to enter the Castro house and had to be sure that the son of the victim was not there.

2. that Jack told the accused that Sonny was not in the house. This circumstance showed that the accused obtained the assurance that encouraged him to execute his plan.

3. that soon thereafter the accused climbed the fence of Castro and jumped into the premises of the latter. This showed the start of the execution of the plan of the accused.

4. that Astroluna Castro died 12 hours more or less, prior to the medico legal officer's post mortem examination on Castro's cadaver in the morning of June 12, 1987. This coincides with the approximate time that the accused was inside the house of Castro.

5. that at 9:30 P.M., more or less, the accused told Eduardo Rusiana that he had stabbed Castro because she had found the accused inside the house. This established an evidence of *res gestae* on the part of the accused reacting to a very recent startling occurrence inside Castro's house. (People v. Naranja No. L-13288, June 30, 1960).

6. that barely an hour or two after that, Eduardo Rusiana told Percival Castro of the strange revelation of the accused. This established the immediate identification of the accused as the one responsible for the death of Castro.

7. that Castro's dead body was found with a fatal stab wound on the left supreclavicular region. This coincides with the declaration of the accused to Eduardo Rusiana that he stabbed Castro.

8. that Castro's video machine and wrist watch were discovered by Percival Castro to be missing right on that very night. This indicated that robbery was committed that night by the accused inside Castro's house and which led him to stab Castro when the latter caught him in the act.

9. that the accused was nowhere to be found in the neighborhood of the locality. This indicated flight of the accused from the crime scene right on that very night and flight is an evidence of guilt.

10. that it was only on July 8, 1987, or almost a month later, that the accused was arrested at Banilad, Cebu City because of his abscondence from his parents' house. This fortifies the evidence of flight and augments the inference of guilt by the accused.

11. that the accused denied his identity upon his arrest, indicating his continued determination to evade arrest even up to the last minutes." (pp. 187-188, Record; pp. 29-30, Rollo.)

People vs. Elizaga, et al. (23 SCRA 449 [1968]), gives Us this lesson:

"Where the events constitute a com-pact mass of circumstantial evidence, the existence of every bit of which was satisfactorily proved, and the proof of each is confirmed by the proof of the other, and all without exception leading by mutual support to but one conclusion, the circumstantial evidence are sufficient to establish the culpability of the accused beyond reasonable doubt." (at p. 460-461.)

In an attempt to discredit the testimony of the prosecution witnesses, accused-appellant points to minor alleged discrepancies in the testimony and affidavits of prosecution witnesses Raymond Duran and Norman Aring. Thus accused-appellant claims that Duran testified that there were four children playing basketball whereas Aring testified that there were only three children playing at the basketball court and they were not even playing basketball. Accused-appellant also alleges that Duran claimed he and the other children saw accused-appellant alone jump over the Castro fence, whereas Aring claimed he saw accused-appellant with two companions climb

out of the Castro property bringing with them a "box-like thing". Finally, accused-appellant states that whereas Duran narrated the meeting of accused-appellant with a certain "Jack", Aring made no mention of any such meeting. (pp. 6-8, Appellant's Brief.)

The alleged inconsistencies refer to minor details and do not impair the probative value of the testimony or the witnesses involved (*People vs. Pigon*, 173 SCRA 607 [1989]). On the contrary, such minor discrepancies, as in the present case, are but natural and even enhance the credibility of the prosecution witnesses because these indicate that the responses given were honest and unrehearsed (*People vs. Agudo*, 137 SCRA 516 [1985]).

Accused-appellant's defense is predicated on denial and alibi. The prosecution witnesses testified that accused-appellant was at the scene of the crime and they identified him as the person who climbed over the fence, climbed back out with a "box-like thing" that corresponded to the description of a video tape player, and as the person who asked Rusiana to check on Mrs. Castro. The identification of accused-appellant was positive and unmistakable. Alibi, in order to be given full faith and credit, must be clearly established and must not leave any room for doubt as to its plausibility and veracity; it cannot prevail over the positive testimony of the prosecution witnesses who have no motive to falsely testify against the accused (*People vs. Fernandez*, 206 SCRA 414 [1992]; *People vs. Rebulado*, 206 SCRA 763 [1992]).

Finally, accused-appellant's flight, concealment and attempt to evade arrest are clear and positive indications of his guilt. It is a proven fact that when the police authorities went to the house of accused-appellant on the night of June 11, 1987, he was nowhere to be found. When his father was asked about accused-appellant's whereabouts, he professed to have no knowledge thereof. Accused-appellant himself testified that he later left his father's place and went to live at his sister-in-law's house after having been informed by his father that the police authorities were looking for him in connection with the killing of Mrs. Castro. Another indication of culpability, as testified to by the arresting officers, is that accused-appellant initially denied his identity when he was arrested.

We need but recall in this connection the well-established doctrine that an accused's flight from the scene of the crime and his act of hiding himself until he was arrested, are circumstances highly indicative of guilt (*People vs. Guevarra*, 94 SCRA 642 [1979]; *People vs. Vengco*, 127 SCRA 242 [1984]; *People vs. Millarpe*, 134 SCRA 555 [1985]; *People vs. Pimentel*, 147 SCRA 25 [1987]).

WHEREFORE, the appeal is hereby DISMISSED, and the challenged decision AFFIRMED, with the modification, in accordance with recent pronouncements, that the civil indemnity shall be increased to P50,000.00.

SO ORDERED.

Gutierrez, Jr., (Chairman), Bidin, Davide, Jr., and Romero, JJ., concur.

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