

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
RODOLFO SALGUERO Y LLANERAS, EMMANUEL MESINA Y DATUIN,
ET AL., ACCUSED, RODOLFO SALGUERO Y LLANERAS,
ACCUSED-APPELLANT.**

G.R. No. 89117. June 19, 1991

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

This is an appeal from the decision of the Regional Trial Court of Quezon City, Branch 92, the dispositive portion of which reads:

"WHEREFORE, in view of the foregoing, judgment is hereby rendered:

1. Finding accused Rodolfo Salguero y Llaneras GUILTY beyond all reasonable doubt as principal of the offense of Robbery with Homicide as charged;
2. Sentencing him to suffer the penalty of reclusion perpetua;
3. Ordering him to pay moral damages in the amount of ONE HUNDRED THOUSAND and 00/100 (P100,000.00) PESOS in favor of the heirs of the victim Alma Sevilla, without subsidiary imprisonment in case of insolvency;
4. To pay the amount of ELEVEN THOUSAND and 00/100 (P11,000.00) PESOS by way of actual damages without subsidiary imprisonment in case of insolvency;
5. To pay costs." (Rollo, p. 31)

The amended information filed against the accused-appellant and three other accused states:

"That on or about the 1st day of September, 1986, in Quezon City, Philippines and within the jurisdiction of this Honorable Court, the said accused, all armed with deadly weapons, conspiring together, confederating with and mutually helping one another, with intent of gain, by means of violence and intimidation on persons, did then and there, wilfully, unlawfully and feloniously rob LEONARDO SEVILLA y FRANCO and his family in the following manner, to wit: on the date and place aforementioned, accused pursuant to their conspiracy went to the residence of said LEONARDO SEVILLA y FRANCO and once thereat, divested Leonardo Sevilla y Franco's wallet containing cash money in the amount of P1,000.00, Philippine Currency, and thereafter stabbed one ALMA SEVILLA y TORRES on the chest, thereby inflicting upon her serious and mortal wounds which was the direct and immediate cause of her death, to the damage and prejudice of said Leonardo Sevilla y Franco in the aforementioned amount and to the heirs of ALMA SEVILLA y TORRES as maybe awarded to them under the provisions of the Civil Code of the Philippines." (Rollo, p. 22)

The accused Salguero pleaded not guilty on arraignment. The other accused were not arraigned as they were still at large.

The prosecution evidence upon which the trial court based its finding of guilt beyond reasonable doubt is as follows:

"The People's evidence reveals that at around 5:00 o'clock in the morning of September 1, 1986, Leonardo Sevilla, 48 years old, married, storekeeper, residing at 11 Simprosa Street, Bagbag, Novaliches, Quezon City was in the process of backing out his jeep from the garage when he was startled to find four strangers behind him armed with deadly weapons. One of the men stuck a gun at his side and barked: 'Patayin mo ang makina'. Having done as he was bade, Leonardo was ordered to alight from the jeep. As soon as he got off, the man who held the gun at him, accused Rodolfo Salguero, took the ignition key and the wallet from Leonardo's back pocket containing P1,000.00 in cash intended for the day's marketing. From the garage, Leonardo was hustled to the front door and once inside the house, the accused ordered the former, 'dapa, dapa'. After the men had hurriedly gone through the premises, Leonardo was told to stand up and ordered to lead the way upstairs. When they reached the pasillo next to Alma's bedroom, Leonardo was again ordered to lie flat on his belly. While in this position, he noticed the intruders going through the family bedrooms. Shortly thereafter, he heard his daughter Alma scream from her bedroom, 'Jesus Christ, Jesus Christ, Alleluia!'. This was followed by the sound of the footsteps of the malefactors rushing down the stairs. Leonardo then ran towards the terrace overlooking the driveway of the garage in time to see the accused and his cohorts on board the family jeep as it was leaving their place. He quickly gave chase but failed to catch up with the jeep as it sped towards the highway.

"At the time that the accused were going through the bedrooms of the Sevilla family, Mrs. Corazon Sevilla was seated on the chamber pot when she was approached by accused Salguero and at the point of the gun ordered 'Dapa, kung hindi mamamatay kayong lahat'. She was led to the passageway where she joined her husband flat on the floor. After the accused had gone, she lost no time in going to her daughter Alma's room because she was much concerned for the 20-year old girl who was still single. (The two younger children, Annalyn and Leo had managed to hide inside the terrace soon as the commotion started. The couple's son, Eduardo Sevilla, was likewise taken by the accused and ordered to lie down on the floor next to his parents together with their maid.) To her great sorrow, she found Alma bathed in her own blood. Alma was rushed to the hospital where she was pronounced dead on arrival. (Exh. "C".) Police investigators recovered a fan knife from the Sevilla residence which appears to be the death weapon. (Exh. "C".)

"Accused Salguero was positively identified by the Sevilla couple during the confrontation at the police station and in open Court as one of the armed men who forcibly entered their house on the day in question who caused the death of their daughter Alma after robbing Leonardo of P1,000.00 in cash." (Rollo, pp. 23-25)

The version of the defense on the other hand, is as follows:

"In denying the charge against him, accused Salguero raises the defense of alibi. He declared on the witness stand that he is an electrician, residing at No. 41, Sauyo Road, Bagbag, Novaliches, Quezon City, formerly employed at ADR Enterprises, located at No. 411 Republic Supermarket, Sta. Cruz, Manila. He left Manila for Olongapo City on August 25, 1986 to buy scrap electrical materials that could be repaired for resale. He stayed in the house of Mr. and Mrs. Bentanilla in Olongapo City for around ten (10) days when he returned to Manila on September 5, 1986. The police arrested him at his house between 12:00 midnight and 1:00 o'clock in the morning of September 23, 1986. In the course of the investigation, he claimed to have been subjected to physical torture by the police." (Rollo, p. 25)

The appellant raises the following assignment of errors, to wit:

I

THE TRIAL COURT ERRED IN FINDING APPELLANT GUILTY BEYOND REASONABLE DOUBT OF ROBBERY WITH HOMICIDE ON THE BASIS OF THE TESTIMONIES OF WITNESSES WHICH WERE

CONFLICTING, UNCLEAR AND EVIDENTLY INADMISSIBLE AS EVIDENCE.

II

THE TRIAL COURT FAILED TO APPRECIATE OR IGNORED UNASSAILED EVIDENCE ESTABLISHING APPELLANT'S INNOCENCE OF ANY PARTICIPATION WHATSOEVER IN THE OFFENSE HE WAS ACCUSED OF COMMITTING." (Appellant's Brief, p. 7)

At the outset, it is noted that the Office of Solicitor General*, in lieu of an appellee's brief, filed a manifestation recommending the acquittal of the appellant. He states that the trial court overlooked certain facts and circumstances pertaining to the identification of the appellant by the prosecution witnesses as one of the perpetrators of the crime which could alter the result of the case.

After a careful review of the records, this Court agrees with the Solicitor General and finds merit in the arguments and submissions of the appellant.

To support the judgment of conviction, the trial court relied upon the identification of the appellant made by the prosecution witnesses. There is a question, however, with regards to the "positive" identification of the appellant which casts doubt on the judgment of conviction beyond reasonable doubt.

The appellant claims that the way he was presented alone, not in a police line-up, for identification to the Sevilla spouses, Leonardo and Corazon and their two sons, Eduardo and Leo is inadmissible citing *People v. Hassan*, 157 SCRA 261, 272 [1988] that:

"The police procedure adopted in this case in which only the accused was presented to witness xxx, is as tainted as an uncounselled confession and thus falls within the same ambit of the constitutionally entrenched protection."

There is no law requiring a police line-up as essential to a proper identification (*People v. Espiritu*, G. R. No. 80406, November 20, 1990). Thus, even if there was no police line-up, there could still be proper identification as long as such identification was not suggested to the witnesses by the police.

In the instant case, there are circumstances which indicate that the identification could have been suggested to the witnesses by the police.

First, although the affidavit of Leonardo Sevilla dated September 23, 1986 (Exh. "A", Records, p. 179) shows that the appellant was recognized by Leonardo from among the people in the investigation room, in his testimony he stated that one of the policemen asked him if he knew that person (the appellant) (TSN, February 13, 1987, p. 17), directing Leonardo's attention to the appellant.

Second, the affidavit of Eduardo Sevilla dated September 23, 1986 (Exh. "G", Records, p. 186) shows that the appellant was presented alone to Eduardo but in his testimony he counteracted this by stating that he picked out the appellant from among several persons in civilian attire. (TSN, March 6, 1987, p. 13) However, he later testified that:

"Q. When accused Salguero was presented to you, were there other people who were presented to you aside from Salguero to identify?

WITNESS

He was with other people.

ATTY. FORTUN

And those persons were police officers, were they not?

A. Police.

Q. But they were in civilian clothes?

A. Yes, Sir.

Q. And you immediately knew that they were police officers, did you know that?

A. Yes, sir.

Q. And in fact you know they were police officers because all of them has (sic) a gun tuck out on there (sic) belts?

A. Yes, sir.

Q. And only Salguero who was the only civilian there who was there without a gun you presume he was a suspect?

A. Yes, sir."

(TSN, March 6, 1987, pp. 17-18; Emphasis supplied)

The appellant then, could at once be picked out from among the police officers as it was obvious that the other people were police officers in spite of their civilian attire.

Third, the affidavit of Leo Sevilla dated September 23, 1986 (Exh. H, Records, p. 185) shows that the appellant was singled out from a police line-up with Pat. Santos, Gurat and Dacillo in civilian clothes but in Sevilla's testimony, he stated that when he saw the appellant, the appellant was alone. (TSN, March 27, 1987, p. 16)

There is a glaring inconsistency in the manner by which the appellant was identified by the witnesses in the police station.

The letter-referral to the prosecutor's office (Exh. K, Records, p. 305) states that the appellant was singled out from a police line-up but it can be gleaned from the witnesses' testimonies that the police may have influenced the identification by the Sevillas of the appellant as they either pointed out the appellant, presented the appellant in an alleged line-up, or presented the appellant alone. This kind of identification is pointedly suggestive as the Sevilla family, having been earlier informed by the police that they have arrested somebody (TSN, February 6, 1987, p. 16; TSN, February 13, 1987, p. 17) were already on the look-out for that arrested person.

Although nothing in Corazon Sevilla's testimony implies that she was influenced by the police, rather she even stated that she recognized the appellant and even went up to him to box him (TSN, February 20, 1987, p. 19), such statement should be regarded with skepticism in view of the above-mentioned circumstances and considering the previous statements made by Corazon (Exhs. E and F; Records, pp. 183-184).

In her September 1, 1986 affidavit (Exh. E) Corazon described the appellant as "mga 35 taong gulang xxx, mga 5'6", maitim, katam-taman ang katawan, unat ang buhok". Her September 23, 1986 affidavit (Exh. F) on the other hand, contained:

"T. Ano ang palatandaan na siya nga ang tumutok sa inyo?

S. Mukha, begote, boses, laki ng tiyan, at lahat na hong katauhan niya." (Exh. F, Records, p. 184)

It was only after seeing the appellant that Corazon remembered the "begote" and the "laki ng tiyan", both important distinguishing marks in describing a person. Corazon maintains that she made it a point to remember

the accused's face (TSN, February 20, 1987, p. 21) but she forgot to mention the moustache in describing the appellant (TSN, February 20, 1987, p. 28) in her September 1, 1986 affidavit, the very day the incident happened.

Also, when Corazon was questioned on whether she suspected anyone, she mentioned a certain Alan (Exh. E) as her suspect but when confronted in open court, she denied having stated such a thing. The Court is aware that affidavits, taken ex-parte are almost always incomplete and often inaccurate (People v. Segwaben, G.R. No. 88401, February 19, 1991) but in this case, Corazon was asked three times in open court whether said affidavit is accurate and complete and three times she said yes. (TSN, February 20, 1987, p. 22, 24, 26). She even admitted that she saw the particular portion which states the name of Alan during her examination of the affidavit in open court but did not take exception to it as she was not asked to explain it. (TSN, February 20, 1987, p. 26)

The factors presented above throw doubt upon the positive identification of the appellant. The Office of the Solicitor-General cites a misappreciation of other facts, namely:

"(1) the real suspect of the police was Otchok Salvador (not appellant), a notorious criminal wanted by the police for robbery and other crimes (May 19, 1987 tsn, pp. 14-16 – Ramon Jarapa).

(2) Otchok Salvador planned and executed the robbery at the Sevilla residence (May 29, 1987 tsn, pp. 6-7 – Venancio de Asis).

(3) the jeep of the Sevillas was recovered within the vicinity of Otchok Salvador's residence (May 29, 1987 tsn, pp. 15-16, 19 – Ramon Jarapa).

(4) Appellant (unlike Otchok Salvador) carried no criminal record, was a Barangay Tanod for several years, was an 'asset' to the Quezon City Police in the resolution of organized crime in his locality, and did not flee, hide (despite the closeness of his residence to that of the Sevillas) or resist arrest when apprehended like a common criminal by the police (May 29, 1987 tsn – Ramon Jarapa; August 18, 1987 tsn, pp. 5-7 – Rodolfo Salguero)." (Rollo, p. 80)

The Office of the Solicitor-General also cites certain unanswered questions which give rise to doubts:

"(1) Why did it take three (3) weeks for the police to go after appellant?

(2) Why was it necessary to give him the third-degree treatment and investigate him without the presence of a lawyer?

(3) What exactly did the police tell the members of the Sevilla family upon fetching them to identify the suspect apprehended? Did they tell them that appellant already admitted participation in the ghastly crime?

(4) Why is there no police report or follow-up on Eugene or Dodong Lim, whom appellant named as his cohorts?

Most probably, with respect to the third nagging question, the police bragged that they had apprehended one subject who admitted to the crime.

The effect of such information to a family crying out for justice would be emotional and unpredictable, swift and instantaneous. There would be no careful reflection." (Rollo, pp. 77-78)

It is somewhat surprising that the decision of the trial court did not carry any lengthy discussion on the questioned identification of the appellant (Decision, p. 9) despite its being raised in the accused's memorandum (Memorandum, pp. 13-18, Records, pp. 345-350) Instead, it examined what it termed as "significant flaws in the theory of the defense." (Decision, p. 4) These flaws, aside from the "positive" identification of the appellant, are what the trial court relied upon to sustain the conviction.

The trial court enumerated the inconsistencies between the testimony of the appellant and that of his own witnesses. These inconsistencies delve on minor details like whether the appellant was receiving a fixed salary or not and on what the appellant purchased during his trip to Olongapo City. (Decision, pp. 5-7) It also dismissed the testimonies of Venancio Asis and Corporal Ramon Jarapa who both claimed that the main suspect of the crime was a certain Otchok Salvador. (TSN, May 29, 1987, p. 7 and pp. 14-16) Asis stated that he decided to make a clean breast of it because he pitied the accused who was detained for a crime he did not commit (TSN, May 29, 1987, p. 9) but the trial court set aside his testimony on grounds that he had no motive to show special concern for the appellant. (Decision, p. 8) As for Jarapa's testimony, it was disregarded as hearsay, based principally on his own personal opinions and conclusions from the information given him. (Decision, p. 8)

The trial court pointed out the weaknesses in the evidence of the defense. But we held in *People v. Hizon*, 180 SCRA 364, 371 [1989] that:

"xxx Even if it be argued that the defense is weak, the fact is that the prosecution is even weaker and so must fail by its own impotence."

The rule is firmly entrenched that a judgment of conviction must be predicated on the strength of the evidence for the prosecution and not on the weakness of the evidence for the defense. (*People v. Furugganan*, G.R. Nos. 90191-96, January 28, 1991, *People v. de Dios*, 187 SCRA 228, 247, [1990]). It is the role of the prosecution to prove the guilt of the appellant beyond reasonable doubt in order to overcome the constitutional presumption of innocence. In this case, the identification of the accused is of utmost importance.

With the abovementioned principle and without the "positive" identification of the appellant, the evidence presented by the prosecution is not sufficient to overcome the presumption of innocence guaranteed by the Bill of Rights to the accused.

We held in *People v. Ng*, 142 SCRA 615, 622 [1986] that:

"From the earliest years of this Court, it has emphasized the rule that reasonable doubt in criminal cases must be resolved in favor of the accused. The requirement of proof beyond reasonable doubt calls for moral certainty of guilt. It has been defined as meaning such proof 'to the satisfaction of the court, keeping in mind the presumption of innocence, as precludes every reasonable hypothesis except that which it is given to support. It is not sufficient for the proof to establish a probability, even though strong, that the fact charged is more likely to be true than the contrary. It must establish the truth of the fact to a reasonable and moral certainty - a certainty that convinces and satisfies the reason and the conscience of those who are to act upon it.' (Moreno, *Philippine Law Dictionary*, 1972 Edition, p. 379, citing *U.S. v. Reyes*, 3 Phil. 3)."

In the instant case, the test of moral certainty was not fulfilled. Since such is the case, the trial court likewise erred in its non-appreciation of the defense of alibi of the appellant. While alibi is admittedly a weak defense, this Court, however, does not at once look upon it with disfavor nor does it have a mental prejudice against the accused who uses it as his defense. For the defense of alibi does not relieve the prosecution of the required burden of proof. Nor is the rule that alibi must be satisfactorily proven ever intended to change the burden of proof in criminal cases. In fact, alibi need not be inquired into where the prosecution's evidence is weak as in the case at bar. (*People v. Mendoza*, 174 SCRA 432, 452 [1989]).

Premises considered, we find the evidence for the prosecution inadequate to prove the guilt of the appellant beyond reasonable doubt.

WHEREFORE, the decision appealed from is hereby REVERSED and SET ASIDE. The appellant is ACQUITTED on grounds of reasonable doubt and ordered immediately RELEASED unless he is detained on some other charges.

SO ORDERED.

Fernan, C.J., (Chairman), Bidin, and Davide, Jr., JJ., concur.

Feliciano, J., no part.

* The case was handled by Assistant Solicitor General Carlos N. Ortega and Associate Solicitor Marcelino U. Arellano.

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