

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. DIONISIO LORENZO Y DE OCAMPO AND JEG GONZALES Y BULAHABO, ACCUSED-APPELLANTS.

G.R. No. 89376. August 05, 1991

Ponente: REGALADO, J.

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REGALADO, J.:

An information for robbery with homicide was filed on April 3, 1989 against accused-appellants Dionisio Lorenzo y de Ocampo and Jeg Gonzales y Bulahabo in Criminal Case No. 32610 of the Regional Trial Court, Branch 131, Kalookan City, allegedly committed as follows:

"That on or about the 31st day of March 1989 in Kalookan City, MM, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring together and mutually helping one another, with intent to gain, and by means of violence and intimidation, did then and there wilfully, unlawfully and feloniously, take, rob and carry away the following articles, to wit:

Cash more or less amounting to

P100,000.00

One (1) ring Brilliant.

P 30,000.00

One (1) college ring gold.

P 22,000.00

One (1) solid Gold wrist watch

P 50,000.00

One (1) Gold necklace.

P 10,000.00

P212,000.00

all belonging to one EDISON PARAS Y ALVARAN, with (sic) the total amount of P212,000.00, that on the occasion of said robbery and for the purpose of enabling them to take, rob and carry away the aforementioned articles, the herein accused in pursuance of their conspiracy did then and there willfully, unlawfully and

feloniously and with intent to kill, stab said EDISON PARAS Y ALVARAN, on the different parts of his body, thereby inflicting upon the latter serious physical injuries which injuries caused his death.

Contrary to law.

Kalookan City, MM.

April 3, 1989."[1]

The Solicitor General submits the facts of the case for the prosecution as follows:

"In the afternoon of 31 March 1989, the victim Edison Ong Paras a.k.a. Edison Paras, was inside the Buenamina Quality Furniture Store on A. Mabini Street, Caloocan City, Metro Manila, which he owned and managed and which also served as his residence. He was watching his employees Romeo Rotone y Pabon and one lady worker known only as Aling Ukit bringing inside the store the merchandise or furniture on display because they were about to close shop for that day (TSN, 23 May 1989, pp. 6 & 14). Aling Ukit left the store at about 6:30 p.m. (Id., p. 15), while prosecution eyewitness Romeo Rotone stayed behind since he was invited by the victim to a disco to celebrate the latter's birthday the next day, April 1. (Id, p. 20)

"At about 7:30 o'clock in the evening of the same date, the display area of the store was already closed, witness Rotone heard the sound of the buzzer and saw the victim Paras open the door leading to the sala. Edison Paras let in the appellant Gonzales and his co-accused Lorenzo to the sala which is separated by a glass divider (Id., pp. 6-7). Then he heard them watching a film on betamax. (Id.)

"At about 9:00 o'clock p.m., while Rotone was in the store waiting for the victim to call him, he heard a commotion ('something fell') coming from the adjacent room where the visitors and the victim were. He ignored it as he was then in the store arranging and holding a flower pot (Id., pp. 8 & 19). However, when he heard another sound of an object falling, Rotone hurriedly peeped through the transparent glass separating the store and the sala where the victim, appellant Gonzales and his co-accused Lorenzo were watching betamax. He saw appellant Gonzales and co-accused Lorenzo stabbing the victim Paras several times. Appellant Gonzales was using what appeared to be a hunting knife, with a hook and jagged edge. (Id., pp. 9-10). After stabbing the victim, Lorenzo went inside the other sala where the victim entertained his close friends and relatives. Rotone then hid himself for fear of being silenced by the assailants. (Id., p. 11).

"Paras, who was then mortally wounded, was still able to reach the door (from whence appellant Gonzales and Lorenzo entered) and managed to shout for help. As the neighbors came and broke down the door, the victim slumped. Initially, the people did not go inside afraid that the robbers may still be in the premises. When the neighbors were preparing to bring the victim to the hospital, witness Rotone managed to slip away and he went to report the incident to the victim's elder sister Estrelita Paras who lived nearby (Id., p. 11).

"The victim was dead on arrival at the hospital. The cause of death was diagnosed by the NBI Medico-Legal Officer, Dr. Maximo Reyes, as: severe hemorrhage secondary to multiple stab wounds The victim sustained 26 stab wounds, 24 of which were fatal, located in the chest and abdomen. (TSN, 30 May 1989, pp. 4-9).

"There was a sign of struggle as indicated by the incised wounds in the scaphalanges and fingers resulting from the instinctive reflex defense actions of the victim. (Id., p. 7).

"Meanwhile, Estrellita Paras, the victim's sister, arrived at the crime scene at about 10:00 p.m. only to find that the victim was no longer there. She stayed in the office and sala because the people present prevented her from going to the residence area as the two men who killed the victim might still be inside. After a few minutes, the policemen arrived and they entered the building and some even climbed the roof. A few moments later, she was informed that appellants Gonzales and Lorenzo were apprehended one after the other. When Estrellita's sister Luningning arrived, both of them proceeded to the police station (TSN, 29 May 1989, pp. 28-29), but not before padlocking the door and requesting the neighbors to watch over the place. (TSN, 30 May 1989, p. 32).

Later, at around 1:00 a.m. the next morning, after the investigation at the police station, they went back to the store with the same policemen to determine what may have been taken from the place. Missing was the amount of P100,000.00, representing the sales for that month, which was supposed to have been picked up and deposited by their brother Val. (TSN, 29 May 1989, p. 31).[2]

As summarized by the trial court in its decision,[3] appellants present a different version. They claim that at around 5:00 o'clock in the afternoon of March 31, 1989, they and a certain Gary "Kabayo" were on their way to the house of Edison Paras for a birthday party, as well as to a disco thereafter. On the way, Gary told them to go ahead as he had to go back to his house for something he had left, promising to rejoin them at the victim's house. Appellants arrived at and were welcomed by the victim in his house, but shortly thereafter the latter's brother arrived and they were requested to leave awhile as the victim had to attend to his brother. They went to and stayed in a nearby store for some time and, after the victim's brother and helpers left, they went back to the victim's house and were ushered by him into the sala where they watched betamax. It does not appear that assailants were aware that Rotone had stayed behind in the house; in fact, they denied his presence therein.

After sometime, Gary arrived but after sensing that he was under the influence of drugs ("sabog"), the victim tried to dissuade the former from going with them to the disco. This was supposedly on the advice of appellant Lorenzo since the victim was the celebrant. Gary agreed not to join them in the disco but he asked for some money which the victim refused to give. After some verbal exchanges, Gary subjected the victim to indignities and slapped him, whereupon the latter dashed to his room and came back with a gun which he poked at Gary. Gary was able to parry the gun, which was thrown away, and then he drew out a knife and repeatedly stabbed the victim.

Appellant Lorenzo claims that he was so confused such that he was unable to assist the victim and, fearing for his life, he went to the second floor where he forcibly opened the door and proceeded to the rooftop. From there, he jumped down to the ground and heard people shouting "magnanakaw, magnanakaw" (thief, thief) and then the onlookers mauled him until he became unconscious. When he regained consciousness at the city jail, he immediately informed his mother, who was beside him, that it was not he but Gary who stabbed the victim. He admitted that he used to visit the victim's place once, twice or thrice a week.

Appellant Gonzales testified that he followed appellant Lorenzo to the rooftop, but when he saw Gary he lay flat on the roof. Later, policemen arrived, poked their gun at him and effected his arrest. He denied that the policemen were able to get P1,711.00 from his pocket since, at that time, he had only P111.00. He further denied having stabbed the victim, insisting that it was only Gary who committed the crime. He also claimed that it was the first time that he had gone to the victim's house.

On July 19, 1989, the Regional Trial Court of Kalookan City promulgated its decision finding accused Dionisio Lorenzo y de Ocampo and Jeg Gonzales y Bulahabo guilty as charged, and sentenced them "to suffer RECLUSION PERPETUA; to indemnify the heirs of the victim in the sum of P30,000.00 and reimburse the heirs of the victim in the sum of P50,000.00 representing reasonable reimbursement for the wake and burial expenses they have incurred and to pay the costs." [4]

The case is now before us on appeal, with each appellant represented by his own counsel and filing a separate brief. Appellant Lorenzo contends that the trial court erred in (1) giving credence to the testimony of the supposed eyewitness Romeo Rotone and holding that the same was logical, straightforward and probable; (2) finding that the accused had confirmed Rotone's presence when the stabbing occurred; (3) holding that accused Lorenzo was one of the perpetrators of the stabbing incident; (4) holding that accused Lorenzo conspired with the perpetrators in the commission of the offense charged; and (5) convicting accused Lorenzo of the crime of robbery with homicide.[5]

Appellant Gonzales' assignment of errors faults the lower court for (1) giving weight to the testimonies of P/Cpl. Abner Castro and Pat. Alexander Gatus, both of the Kalookan City Police Department, regarding their investigation of appellant Gonzales because said investigation was done in violation of appellant's constitutional right under Section 12 of the Bill of Rights; (2) admitting in evidence the affidavits of P/Cpl. Abner Castro and Pat. Alexander Gatus, Exhibits "D" and "E," for the reason that said affidavits blatantly show a failure of compliance with the constitutional guarantee afforded appellant Gonzales under Section 12 of the Bill of Rights; and (3) giving weight and credence to the testimony of Romeo Rotone, the alleged eyewitness, for, on closer examination, said testimony is full of contradictions and simply beyond belief, thus creating a strong reasonable doubt.[6]

It is therefore, evident that the resolution of this case hinges on the issue of credibility and the correctness of the factual findings of the court a quo.

We are accordingly constrained to advert to and rely on the rule, well established in this jurisdiction, that in the absence of any fact or circumstance of weight and influence which has been overlooked or the significance of which has been misconstrued as to impeach the findings of the trial court, the appellate courts will not interfere with the trial court's findings on the credibility of witnesses, or set aside its judgment, considering that it is in a better position to decide the question, having heard the witnesses themselves during the trial.[7]

The matter of assigning values to declarations at the witness stand is best and most completely performed or, carried out by a trial judge who, unlike appellate magistrates, can weigh such testimony in the light of defendant's behavior, demeanor, conduct and attitude at the trial, and the conclusions of trial courts command great weight and respect.[8] Moreover, the accepted rule is that in weighing contradictory declarations and statements, greater weight must generally be given to the positive testimony of the prosecution witnesses than to the denials of the defendant.[9]

A painstaking review of the records of and the evidence submitted in this case brings us to the conclusion that no cogent reason exists as would justify a departure from the foregoing rules in determining the culpability of appellants for the special complex crime with which they are charged.

It is not disputed that Edison Paras was stabbed to death on the evening of March 31, 1989. The nature and character of the wounds sustained by the deceased are stated in the necropsy report of Dr. Maximo Reyes who performed the autopsy on April 1, 1989, thus:

x x x

"Contused abrasions, 2.5 x 4.0 cm. area of forehead from left to right; 15.0 x 20.0 cm. area of the arm anterior aspect, right; 10.0 x 11.0 cm. scapular area, left.

Incised wounds, 1.0 cm. base of thumb, anterior aspect, right; 2.0 cm. ring finger, left, anterior aspect, 3.0 cm. index finger left anterior aspect both distal phalanges.

stab wounds:

1. All elliptical, gaping, three (3) in number, and located over left side of chest, 2.0 cm., 2.1 and 2.5 cm. in size, level of 1st, 3rd and 5th intercostal space all entering thoracic cavity and severing upper and lower lobe of left lung.
2. Two (2) in number located over the right side of chest with clear cut edges and one extremity sharp, other is contused similar to the 1st three mentioned above and also elliptical; gaping 2.5 and 3.0 cm. in size level (sic) of 3rd and 4th intercostal space, both entering the thoracic cavity and severing the middle lobe of right lung.

3. All elliptical and gaping with clean cut edges and with one extremity sharp, other is contused, twenty-one (21) in number, all located over the abdomen from left to right comprising an area of 30.0 x 25.0 cm. biggest diameter 3.5 cm. and smallest 2.0 cm. except for two (2) over the left side of the abdomen, all entering the perito-neal cavity severing small and large intestines, right and left lobe of liver, spleen and stomach.

x x x

Cause of Death: - Severe hemorrhage secondary to multiple stab wounds."[10]

Appellants, however, insist in this appeal that one Gary "Kabayo" was the only person responsible for the stabbing of Edison Paras. The theory of appellants collides with the categorical testimony of the prosecution witness, Romeo Rotone, to the effect that he actually saw the victim being simultaneously stabbed by both appellants in the receiving room or sala of the house. It is established that witness Rotone could not have been mistaken as to the identities of appellants as, prior to March 31, 1989, he had seen or met both appellants three (3) times when they went to the shop. On the occasion of the stabbing incident, he clearly saw them through a transparent glass in the dividing wall of the adjacent room where he was at the time.[11] No derogatory motive has been adduced as would devalorize Rotone's testimony and militate against the credibility and weight thereof.

Appellants assail the credit given by the court a quo to the testimony of said prosecution witness for being supposedly illogical, absurd and improbable. Appellant Lorenzo claims that it is most unlikely that Rotone was ever present at the scene of the crime since the latter did not even take any action to aid the victim. This overlooks the well-known fact that one cannot rely merely on how one believes a person should behave since there is no standard as to how a person may react to a shocking incident. At any rate, Rotone explained that he hid himself for fear that he would also be attacked by appellants.

On the other hand, while appellants maintain that one Gary "Kabayo" was the person solely responsible for the crime, they have utterly failed to prove the same. Aside from appellant's allegations, no evidence was ever presented to prove the existence of said Gary "Kabayo" nor was there any proof of the supposed person's presence at the scene of the crime.

Such pretension of appellants cannot prevail over the affirmative assertions of witness Rotone which was bolstered by the testimony of Dr. Maximo Reyes, the medico-legal examiner. Dr. Reyes explained without contradiction that the incised wounds of the scaphalanges and fingers of the victim were due to his reflex defensive actions and were thereby indicative of a struggle among the protagonists. He also stressed that considering the multiple stab wounds inflicted on the victim, 26 stab wounds of which 24 were fatal, the possibility is that there was more than one assailant.[12]

The trial court did not err in holding that appellants conspired with each other in the commission of the offense. To prove conspiracy, the prosecution need not establish that all the parties thereto agreed to every detail in the execution of the crime or that they were actually together at all the stages of the conspiracy. It is enough that, from the individual acts of each accused, it may reasonably be deduced that they had a common plan to commit the felony.[13]

Consequently, there is conspiracy if the evidence presented by the prosecution clearly indicates that the acts and behavior of the accused reveal their common purpose to assault and inflict harm upon the deceased and that there was a concerted execution of that common purpose.[14]

Here, the concerted efforts of appellants can be inferred from the following testimony of witness Rotone:

"Q - At about 7:30 in the evening of the same date, March 31, 1989, were you still at the store?

A - Yes, sir, I was.

Atty. Mangahas ?

Q - At about 7:30 o'clock in the evening, was there anything unusual that happened inside the store where you were?

A - At that precise time, sir, 7:30 p.m., on that date, March 31, 1989, I heard the buzzer rang (sic) and Mr. Edison Paras also heard the ringing of the buzzer, sir, so he opened the door and I also saw the two (witness referring by pointing to the place where the two accused are seated and previously identified during the arraignment)

Q - Who were the two persons whom you saw?

A - I only came to know their names, sir, as Jeg and Dionisio.

Q - Where were these two persons when you saw them?

A - When I saw them, sir, they were already following or they followed Edison Paras in going in, sir, and then after they entered, I heard as if they were watching a play of the betamax, sir, because we have just closed the shop at that time.

x x x

Q - Now you testified that you heard the playing of a betamax, what happened after that?

A - When I heard they were still watching betamax, sir, I ignored them, I did not peep and when something fell, I still did not pay attention, sir.

Q - What were you doing at that time?

A - At that precise time, sir, I was holding a flowering (sic) pot and I was about to transfer the same so that in case we open our door in the morning, it will not be an obstruction to the door we are heading, sir.

Q - You heard something fell (sic) and yet you did not pay attention to it, after that, was there anything (sic) happened after that?

A - Yes, sir.

Q - What happened?

A - I heard another object fell (sic), sir, and I went to see it, sir, and when I peeped through the transparent glass, I saw the two, Jeg and Dionisio, helping one another in stabbing several times Edison Paras, sir."[15]

The failure of the witness to specifically identify the appellant who inflicted the lethal stab wounds on the victim is not critical or essential, since the conspiracy between appellants was duly alleged and proven at the trial. Where there is conspiracy, a showing as to who inflicted the fatal blow is not required.[16]

With respect to the robbery charged as a component of the subject composite crime, we reject appellant Gonzalez' protestations that the money retrieved from his person was merely "planted" by the policemen. No plausible reason was even advanced as to why and how said officers could have resorted to such incriminatory fabrication. The rapidity and sequence of events -- the alarm raised by the cries for help of the victim, the immediate response of his neighbors, the timely arrival of the police and the apprehension of appellants shortly thereafter -- these render remote the possibility that other persons engineered the robbery and foisted that felony on appellants. While only a portion of the proceeds of such crime was recovered, that suffices to establish their culpability for the robbery by reason or on the occasion of which the murder was committed by appellants. Save

for the robbery aspect, the records do not reveal or suggest any other possible reason for their simultaneous criminal and fatal assault on the victim.

The case of *People vs. Pacala, et al.*,^[17] is however, raised against our considering robbery as a component of the crime charged. The argument premised thereon was also involved in *People vs. Espera, et al.*,^[18] where, in view of the variance in the factual setting vis-a-vis that in the case at bar, we adopted this pragmatic response:

"To the same effect, as noted by Mr. Justice Padilla, is the doctrine in *People vs. Pacala, et al.*, where it was held that absent conclusive evidence that robbery has actually taken place, there can be no conviction for the composite crime of robbery with homicide, but only for homicide which was duly proved. While this holding has been criticized as inaccurate, We are persuaded to hold it as an applicable determinant for our present purposes. It observes fidelity to the fundamental rule that criminal law should yield any reasonable doubt in favor of the accused. At least in the factual milieu of the present case, the acceptance of the foregoing doctrines would not constitute an exacting onus on the criminal justice system and the law enforcement agencies by seemingly demanding that there be an eyewitness to prove the actual apoderamiento in crimes like robbery or theft. For, further to what has already been said, in the case at bar, there is a paucity of evidence showing that, other than the accused, no other person had or could have had access to the premises where the money and the watch were allegedly kept, either before or after the killing of the victim and until the loss was supposedly discovered. The possibility that there could have been other intruders enhances the element of doubt in favor of appellants on this score."

As earlier explained, in the present case the circumstances are such that only the malefactors, during the swift succession of events that accompanied and followed the killing, could have had access to the money found in the possession of appellant Gonzales. No outsiders were able to intrude into the premises and, shortly thereafter, the police arrived and apprehended the appellants. To require eyewitnesses to the robbery, as *Pacala* would imply, would be too unreasonable and exacting in the face of ample circumstantial evidence, not speculations, a rational appreciation of which evidence establishes appellants' culpability for robbery. For, as early as *U.S. vs. Merin*^[19] this Court declared that "(i)n the absence of any other known motive for the crime, it would be, in our judgment, to reject the universal teaching of experience to refuse to draw the inference that the same person who killed the occupants of the house also committed the robbery."

The other objection, under *Pacala*, that none of the things stolen were recovered does not apply in the instant case. Here, the amount of P1,711.00 was recovered from appellant Gonzales right at the crime scene, his lame and easily fabricated excuse being that it was "planted" on him. True, no amount was retrieved from appellant Lorenzo but it must be recalled that in trying to escape he jumped into the avenging arms of the crowd gathered below and he was mauled by them. It is not far-fetched that whatever he had taken from the victim's house was lost or removed from him during that episode.

The amounts and items alleged in the information were merely based by the prosecutor on information supplied by the investigators and the victim's siblings and it would be absurd that, to establish the charge of robbery, there must be proof that appellants actually knew of the existence thereof or that all of said items be recovered from them. Much less should evidence be required that appellants went to the victim's house with intent to rob aforethought.

That robbery was their purpose appears to be the only logical deduction, but assuming that they also had the desire to take revenge for grievances against the victim, still they are liable for robbery with homicide.^[20] Evidently, it is their subsequent actuations at the scene of the crime that prove what had been and is their primary motive or intent. To require direct evidence on this point is to lend credence to the lament that the law appears to give more rights and protection to the accused than to the victim and his heirs.

We disagree with the proposition of appellant Gonzales that the trial court erred in admitting and giving weight to the testimonies of P/Cpl. Abner Castro and Pat. Alexander Gatus concerning the investigation they conducted on him because the same was allegedly done in violation of his constitutional right under Section 12 of Article III of the 1987 Constitution.

Said appellant, in his brief, alleges that:

"The accused-appellants in the case, particularly Jeg Gonzales, were brought to the Police Headquarters for investigation (tsn, p. 31, 20 June 1989, Balcarse). He was also brought to the rooftop near the place of the incident by Pat. Alexander Gatus and other policemen. There he was made to point to a knife (Exhibit 'H') lying on the roof. (tsn, p. 9, 21 June 1989, Balcarse) and he allegedly admitted before the policemen that it was the knife he used in stabbing Edison Paras. (tsn, p. 7, 22 May 1989, Aviles), in his affidavit, Exhibit 'D', Pat. Alexander Gatus, referring to Jeg Gonzales, states: 'That suspect when conducted spot interrogation verbally admitted having as (sic) one of the suspects who stabbed and carted away the money.'"[21]

It is true that the right of a person under interrogation to be informed of his right to remain silent and to counsel implies a correlative obligation on the part of the police investigator to explain, and contemplates an effective communication that results in the understanding of what is conveyed. Short of this is a denial of the right, as it cannot truly be said that the accused has been informed of his rights. Where the "informing" done by the police was nothing more than a superficial and mechanical act, performed not so much to attain the objectives of the fundamental law as to give a semblance of compliance with it, the constitutional mandate is not complied with.[22]

What must not be lost sight of, however, is that said constitutional provision prohibits as evidence only confessions and admissions of the accused and only as against himself. Further, we agree with this comment of the Solicitor General:

"Thus, granting arguendo that the constitutional rights of appellant were indeed violated by P/Cpl Castro and Pat. Gatus, it is respectfully submitted that only appellant's testimony taken in violation thereof should be inadmissible evidence-but not the affidavits and testimonies of these two police officers, notwithstanding appellant's claim to the effect. Verily, the testimonies of P/Cpl Castro and Pat. Gatus, especially with respect to their having gone to the scene of the crime, the recovery on the rooftop thereof of the knife used in killing the victim (TSN, 22 May 1989, p. 7), and the recovery by Pat. Gatus of the amount of P1,711.00 in the person of the appellant (Id., p. 8), could not be expunged from the records as they are not affected by the alleged inadmissibility of appellant's own extrajudicial confession."[23]

Moreover, from the preceding discussion of the facts of this case and the evidence for the People, we are convinced that even if said appellant's extrajudicial confession would be disregarded, the evidence of the prosecution is sufficient to prove his guilt beyond reasonable doubt.[24]

Finally, the inexplicable fact that appellants ran away from the scene of the crime is a significant indication of their guilt. Appellants used the door exit on the second floor and proceeded to the rooftop from where they obviously thought of jumping off to an adjacent building and, thence, to the street below. Such behavior cannot but be positive and convincing evidence of their consciousness of guilt. Had they really been as blameless as they would now pose, there was nothing that would have prevented them from proceeding to the front door and opening the same to meet the victim's neighbors who had congregated outside in response to the victim's cries for help, and then forthwith proclaim their innocence by spontaneously denouncing the so-called Gary "Kabayo" as the culprit.

WHEREFORE, the challenged judgment of the trial court is hereby AFFIRMED, with the modification that the indemnity for the death of the victim is increased to P50,000.00 consonant with the present case law thereon.

SO ORDERED.

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

Padilla, J., see concurring and dissenting opinion.

Sarmiento, J., join J. Padilla in his concurring and dissenting opinion.

[1] Original Record, 1.

[2] Rollo, 167-171.

[3] Original Record, 91-93.

[4] Per Judge Antonio J. Fineza; Original Record, 95.

[5] Brief for Accused-Appellant Dionisio Lorenzo, 5-6; Rollo, 45-46.

[6] Brief for Accused-Appellant Jeg Gonzales, 1-2; Rollo, 121--122.

[7] People vs. Jovellano, 56 SCRA 156 (1974).

[8] People vs. Magallanes, et al., 23 SCRA 1274 (1968).

[9] People vs. Gonzales, et al., 76 Phil. 473 (1946). See also People vs. Biago, 182 SCRA 411 (1990).

[10] Original Record, 50.

[11] TSN, May 23, 1989, 8-9.

[12] TSN, May 30, 1989, 7-9.

[13] People vs. Caitor, et al., 137 SCRA 761 (1985).

[14] People vs. Batas, et al., 176 SCRA 46 (1989).

[15] TSN, May 23, 1989, 52-53.

[16] People vs. Flores, et al., 185 SCRA 366 (1990).

[17] 58 SCRA 370 (1974).

[18] 175 SCRA 728 (1989).

[19] 2 Phil. 88 (1903).

[20] People vs. Luna, 58 SCRA 198 (1974); People vs. Damaso, et al., 86 SCRA 370 (1978).

[21] Rollo, 129-130.

[22] People vs. Repe, et al., 175 SCRA 422 (1990), citing People vs. Newman, et al., 163 SCRA 496 (1988).

[23] Rollo, 175-176.

[24] People vs. Polo, 147 SCRA 551 (1987).

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CONCURRING AND DISSENTING OPINION

PADILLA, J.:

I concur in the majority opinion insofar as it affirms the trial court's judgment finding that the appellants killed the victim Edison Paras. The testimony of prosecution witness Romeo Rotone positively identified the appellants as the perpetrators of the felony and clearly described the manner in which the killing was done, which was at least characterized by the abuse of superior number and commission in the victim's abode.

But I dissent insofar as the crime is classified as robbery with homicide.

Robbery with homicide is primarily a crime against property and not against persons. Homicide is a mere incident in the robbery, the latter being the main purpose and object of the criminal (People vs. Pagal, G.R. No. L-32040, 25 October 1977, 79 SCRA 570, 576-577). In order to sustain a conviction for the crime of robbery with homicide, it is necessary that the robbery itself be proven as conclusively as any other essential element of the crime (People vs. Pacala, G.R. No. L-26647, 15 August 1974, 58 SCRA 370, 377). Proof of the homicide is insufficient to prove robbery. Moreover, the original criminal design of the culprit must be to commit robbery and the homicide is perpetrated with a view to the consummation of the robbery (People vs. Manalang, G.R. No. 67662, 9 February 1989, 170 SCRA 149, 162).

In the case at bar, there were no eyewitnesses to the alleged robbery. The evidence to the charge of robbery is merely circumstantial in character. Thus, Estrellita Paras, sister of the victim, testified that:

"Later, at around 1:00 a.m. the next morning, after the investigation at the police station, they went back to the store with the same police-men to determine what may have been taken from the place. Missing was the amount of P100,000.00, representing the sales from that month, which was supposed to have been picked up and deposited by their brother Val. (TSN, 29 May 1989, p. 31)." (pp. 3-4, majority opinion)

Pat. Alexander Gatus, a member of the Kalookan City Police, one of the policemen who responded to the call for assistance at the Buenamina Furniture Quality Store, also testified that when he arrested accused-appellant Jeg Gonzales he recovered from the latter the amount of P1,711.00 (TSN, 30 May 1989, p. 14). However, none of the pieces of jewelry that were allegedly stolen was ever recovered. As the trial court said:

"From the evidence thus adduced only the fact of death of Edison Paras and the fact of loss and recovery of the amount of P1,711.00 from accused Gonzales were established. Here, it must be remembered that the jewelries and the rest of the money allegedly carted away by the two accused were not recovered from them." (Rollo, p. 29)

Moreover, considering that appellants were apprehended one after the other immediately after the incident, it is rather strange that out of the P100,000.00 that was allegedly stolen by the appellants only the amount of P1,711.00 was recovered from the accused Gonzales.

Furthermore, the prosecution did not present any evidence showing that the appellants knew of the existence of the money in the amount of P100,000.00 and of the pieces of jewelry or of the place where they were allegedly kept. The prosecution also failed to adduce evidence that when appellants went to the Buenamina Quality Furniture Store on A. Mabini Street, Caloocan City, Metro Manila, their intention was to rob the victim, Edison Paras.

It would appear, therefore, that the conclusion of the trial court that herein appellants are "guilty beyond reasonable doubt of the crime of robbery with homicide" is based on mere inference, conjecture and not upon positive evidence.

In *People vs. Pacala, supra.*, this Court held:

"1. In connection with the robbery aspect of the crime charged, two things must be borne in mind: first, that there were no eyewitnesses to the alleged robbery; and second, that none of the things allegedly stolen, namely, the transistor radio and the trunk purportedly containing the sum of P1,700.00 was ever recovered. If there was, therefore, any evidence to support the charge of robbery, the same was entirely circumstantial in character.

"Roque Bacsal testified that the five accused surrounded the hut, and after Saberon fired his pistol, he and his father jumped from the hut into the ground and ran to a place about sixty meters away where his father was overtaken and attacked by said accused, and, afterwards, the latter left and proceeded towards the direction of the hut. Roque then went to the succor of his father and tried to assist him until Victoriano Fortaleza, the barrio captain, arrived. It was only after the arrival of the barrio captain that Roque was able to return to their hut, and discovered that the radio and the trunk where the money was kept were missing.

"It is evident from the foregoing that no iota of evidence had been presented showing that appellants and their companions knew of the existence of the money in the amount of P1,700.00, or of the place where it was allegedly kept, much less is there any positive proof that when they went to the place of the victim their intention was to rob the latter. It would seem, therefore, that the trial court's conclusion that it has been 'established beyond peradventure of doubt that, taking advantage of the night, five men decided to rob the deceased whom they knew to have some money in the trunk ...,' is based on a mere inference, or conjecture and not upon positive evidence. It is well-settled that in order to sustain a conviction for the crime of robbery with homicide, it is necessary that the robbery itself be proven as conclusively as any other essential element of a crime. In order for the crime of robbery with homicide to exist, it is necessary that it be clearly established that a robbery has actually taken place, and that, as a consequence or on the occasion of such robbery, a homicide be committed. Where the evidence does not conclusively prove the robbery, the killing of the victim would, therefore, be classified either as a simple homicide or murder, depending upon the absence or presence of any qualifying circumstance, and not the complex offense of robbery with homicide." (Underscoring supplied)

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