

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. MARIO BRIONES, GERARDO JAVIER AND EUSEBIO ALLIED, ACCUSED.
MARIO BRIONES & GERARDO JAVIER, ACCUSED-APPELLANTS.**

G.R. No. 90319, October 15, 1991

Ponente: PARAS, J.

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PARAS, J.:

The accused-appellants are questioning their conviction by the Regional Trial Court, Third Judicial Region, Branch 54, Macabebe, Pampanga of robbery with double homicide. They contend that the trial court erred in holding that the crime committed is robbery with double homicide despite insufficiency of evidence, in not holding that the evidence obtained against them is inadmissible for violation of their constitutional rights to remain silent, to counsel and against self-incrimination during custodial investigation, and in not holding that their guilt was not proved beyond reasonable doubt. They likewise argue that their arrest was illegal for having been made without a warrant.

The information filed in said case reads:

"That on or about the 23[rd] day of April 1988, at Barangay Dela Paz, municipality of San Simon, province of Pampanga, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused MARIO BRIONES y GUINTO, GERARDO 'JERRY' JAVIER y ALLIED and EUSEBIO ALLIED y GALICIO alias 'KIKOY', conspiring, confederating and mutually helping one another, with intent of gain, and with force and violence against persons, entered the house of spouses Felicisimo B. Gutierrez and Florencia Diaz-Gutierrez and once inside, did then and there willfully, unlawfully and feloniously take, steal and carry away with them cash money amounting to P50,000.00, Philippine currency, and assorted jewelries valued at P50,000.00 or a total amount of P110,000.00, belonging to the said spouses, to the damage and prejudice of said spouses, in the total amount of P110,000.00, Philippine Currency, and on the occasion thereof, in pursuance of their act of conspiracy, with intent to kill, did then and there willfully, unlawfully and feloniously assault, attack, strike and hit said spouses on the head, face and different parts of their body with the use of hard objects and bladed objects or instruments, inflicting mortal and fatal injuries upon said spouses which caused their instantaneous death.

"ALL CONTRARY TO LAW." (pp. 19-20, Rollo)

After trial on the merits involving only appellants Mario Briones and Gerardo Javier as accused Eusebio Allied was at large, the trial court rendered its decision, the dispositive portion of which reads:

"WHEREFORE, the Court, finding both accused guilty as principal beyond reasonable doubt for the crime of robbery with homicide, hereby renders judgment sentencing the accused Mario Briones and Gerardo Javier, as follows:

"1. To each suffer the penalty of RECLUSION PERPETUA and the accessories of the law.

"2. To indemnify the heirs of the late Felicisimo Gutierrez and Florencia Diaz Gutierrez in the amount of

P40,000.00 as moral damages and P20,000.00 as exemplary damages.

"SO ORDERED." (p. 26, Rollo)

The antecedent facts, as stated in the plaintiff--appellee's brief, are as follows:

"In the evening of April 23, 1988, Pantaleon Francisco, 31 years old, was tending his sari-sari store in Barangay Dela Paz, San Simon, Pampanga (pp. 10, 13, tsn, July 12, 1988). At about 11:30 p.m., appellants Gerardo Javier and Eusebio Allied came to Francisco's store and ordered beer (p. 16, *ibid*). They drank four bottles of beer (p., 17 *ibid*). Appellant Mario Briones arrived and was offered beer by Gerardo Javier and Eusebio Allied. Mario Briones declined and left (pp. 17-18, *ibid*). After about 30 minutes, appellants Gerardo Javier and Eusebio Allied also left the store (p. 19, *Ibid*).

"About eight meters away from Pantaleon Francisco's store was the house of spouses Felicisimo Gutierrez and Florencia Diaz Gutierrez at the ground floor of which was also a store (p. 11, tsn, July 12, 1988; p. 12, tsn, July 26, 1988). At the street near the store was a lighted 100-watt electric bulb (p. 25, July 12, 1988). A tall coconut tree stood between the houses of Pantaleon Francisco and the Gutierrezes (p. 35, *Ibid*).

"At past 11:00 o'clock, Pantaleon Francisco closed his store when all his customers had left. Not long after, he heard the barking of dogs from the Gutierrez residence (p. 21, tsn, July 12, 1988). Feeling that something untoward was taking place, Pantaleon Francisco went out of his store (p. 22, *ibid*).

"Pantaleon Francisco saw appellants Mario Briones and Gerardo Javier, together with Eusebio Allied, under the electric bulb, mauling Florencia Diaz Gutierrez who was lying prostrate on the ground (pp. 25--28, tsn, July 12, 1988). The three later dragged Florencia Diaz Gutierrez inside her house and closed the door (pp. 31-32, *ibid*).

"While Mario Briones, Gerardo Javier and Eusebio Allied were inside the Gutierrez residence, the lights on the second floor of the house were switched on (p. 34, tsn, July 12, 1988). The dogs continued to bark (p. 35, *ibid*).

"When the wife of Pantaleon Francisco arrived from Barangay Libutad, San Simon, where she attended a fiesta, at about 4:00 a.m., Pantaleon Francisco told her about what he witnessed (p. 37, tsn, July 12, 1988).

"In the morning of April 24, 1988, Pantaleon Francisco went to the house of the Gutierrezes. He found it in disarray, with the spouses sprawled dead on the first floor near the store (pp. 38-39, tsn, July 12, 1988).

"Informed of the crime, Pat. Emerito Maniago, Chief Investigator of the San Simon Police Force, formed a team of investigators and proceeded to the scene (p. 8, tsn, July 26, 1988). They found Felicisimo Gutierrez and Florencia Diaz Gutierrez lying dead in the sala where broken bottles of soft drinks were scattered all over (p. 10, tsn, July 26, 1988). They also noticed blood stains at the gate before the door of the house (pp. 9, 42, tsn, July 26, 1988).

"Pantaleon Francisco disclosed to the police officers the identity of the perpetrators of the crime on April 25, 1988 at 9:00 a.m. (p. 40, tsn, July 13, 1988). Acting on the information supplied by Pantaleon Francisco, Pat. Maniago and his team went to the house of Ofelia Javier, a sister of appellant Gerardo Javier, at Hulo, Malabon, Metro Manila, where appellants Mario Briones and Gerardo Javier were working as construction workers. They came upon Mario Briones as he was going to the house of Ofelia Javier (p. 23, tsn, July 26, 1988). At first Mario Briones denied having anything to do with the crime (p. 25 *ibid*). But when a necklace and two bracelets belonging to the victims were found in his possession (pp. 26-28, tsn, *ibid*), he admitted his complicity and revealed that his two companions in the commission of the crime were Eusebio Allied and Gerardo Javier (p. 25, tsn, July 26, 1988).

"On the basis of the disclosure of Mario Briones that Gerardo Javier had some relatives in Daang Hari, Bicutan, Taguig, Metro Manila, Pat. Maniago and his team proceeded to the place. They found Gerardo Javier

sleeping in the house of a relative (pp. 29-30, tsn, July 26, 1988).

"Mario Briones and Gerardo Javier were brought to San Simon, Pampanga. On April 26, 1988, Pantaleon Francisco was invited to the police precinct to identify the culprits. From among the persons present at the precinct, he readily pointed to Mario Briones and Gerardo Javier as the culprits (p. 46, tsn, July 12, 1988) and identified them by name (p. 47 *ibid*). In the course of the investigation, Mario Briones disclosed the place where they hid their loot (p. 28, tsn, July 26, 1988). Part of the loot, consisting of coins, was dug up at the back of a school building in Dela Paz, San Simon, Pampanga, which Mario Briones indicated (p. 33, tsn, July 26, 1988). The loot was placed in a bag and jute sack (p. 34, *ibid*). It was valued at P4,000.00 (p. 35 *ibid*)." (pp. 5-11, Brief for Plaintiff-Appellee; p. 49, Rollo)

It is the contention of the accused-appellants that it was difficult, if not impossible, for Pantaleon Francisco, the sole prosecution eyewitness, to identify the persons who mauled Florencia Diaz Gutierrez since a coconut tree, a barbed wire, and flower pots obstructed his vision (p. 13, Appellant's Brief).

The accused-appellants try to destroy the credibility of Pantaleon Francisco by asseverating that: 1) said witness did not report what he saw the morning immediately following the incident; 2) he gave inconsistent answers as to how long he had been residing in Barangay Dela Paz, San Simon, Pampanga; 3) on the one hand, he claimed that on April 26, 1988 he worked in Makati, but on the other hand, he declared that he was called to the police precinct; and 4) if he was inside his store he could not see the store of the spouses, but if outside his house he could see it. (pp. 13-14, Appellant's Brief).

It is likewise their contention that conspiracy was not established and their constitutional rights to remain silent, to counsel and against self-incrimination were violated (pp. 16 & 18, Appellant's Brief), that the alleged stolen articles were not formally offered in evidence (p. 15, *ibid*.), and that their arrest was illegal because it was made without the warrant of arrest prescribed by law.

The issues raised in the appeal, being closely interrelated, will be discussed jointly.

After reviewing the evidence as shown by the records of this case, We find no reason to deviate from the well-settled doctrine that the findings of facts of the trial judge on the credibility of witnesses deserve respect by the appellate court in view of its privilege of examining the demeanor of the witnesses as they testify and in the absence of grave abuse of discretion. (*People v. Alcantara*, 151 SCRA 326; *People v. Adones*, 144 SCRA 364)

We are convinced that Pantaleon Francisco was certain that the culprits were appellants, Briones and Javier, and Eusebio Allied. Before the incident, Francisco had known Briones for some seven (7) years (p. 12, tsn, July 12, 1988) and Javier, a relative of Allied, for about a week already (p. 16, tsn, July 12, 1988). Immediately before the incident, Javier and Allied drank four bottles of beer in Francisco's store (p. 16, *ibid*.). When Briones arrived, they offered him beer but he refused. Briones, Javier and Allied stayed for about thirty more minutes in Francisco's store, giving the latter more opportunity to recognize the appellants and Allied before they robbed and killed his neighbors some eight meters away. Besides, under a 100-watt electric light, Francisco could readily recognize the culprits. To quote a portion of his testimony,

Q.

When you were already outside your store, what did you see?

A.

I saw three persons Mario Briones, Gerry Javier and Eusebio Allied, sir.

Q.

Where did you see these three persons whose names you have just mentioned?

A

They were near the door of the store of the spouses Felicisimo Gutierrez and Florencia Gutierrez, sir.

Q.

What were they doing, I am referring to these three persons whose names you mentioned when you saw them near the door of the store of the Gutierrez?

A.

I saw them assaulting a person who was already lying prostrate on the ground.

Q.

When you said you saw them assaulting, how were they assaulting a person lying prostrate on the ground?

A.

They were boxing, sir.

Q.

What was the position of that person they were boxing when you saw them?

A.

Yes, sir, the person they were assaulting was already lying on the ground.

Q.

Did you recognize that person they were mauling that evening?

A.

Yes, sir.

Q.

Who is he?

A.

She is Florencia Diaz, sir.

Q.

And you said you recognized that person they were mauling to be that of the person of Florencia Diaz, are you referring to Florencia Diaz Gutierrez the wife of Felicisimo Gutierrez your neighbor?

A.

Yes, sir.

Q.

Could you tell us Mr. Francisco as it was about past 11:00 o'clock in the evening when this incident took place how were you able to recognize Florencia and the three persons mauling her?

A.

There was a light outside the house which was on, sir.

Q.

What kind of a light was that?

A.

An electric light which was bright, sir, maybe about 100 watts.

Q.

In relation to the place where you saw the three accused mauling the late Florencia Gutierrez where was the electric bulb?

A.

It is almost above them, sir. (pp. 22-26, tsn, July 12, 1988) (pp. 14-16. Brief for plaintiff-appellee; p. 49, Rollo)

If the court has previously held that the light of stars (People v. Vacal, 27 SCRA 24) or moon (People v. Pueblos, 127 SCRA 746), flames from an oven (People v. de la Cruz, 147 SCRA 359), wick lamp or "gasera" (People v.

Aboga, 147 SCRA 404) can give ample illumination to enable a person to identify or recognize another, then with more reason a 100-watt bulb is sufficient to enable Francisco to identify appellants at a distance of about eight meters.

Also, Francisco's testimony that appellants and Allied boxed Florencia Gutierrez outside her house and later dragged her inside is corroborated by physical evidence (the blood stain near the gate and before the house) noted by the police investigators (pp. 9 and 42, tsn, July 26, 1988).

The appellants likewise stress heavily Francisco's failure to report the incident to the authorities in the morning of April 24, 1988. We tend to believe that such silence is not an unexpected reaction to the murder which had taken place and which Francisco was unfortunate enough to have witnessed. Francisco and his wife were afraid of appellants and Allied who were then still at large. Be it noted, however, that on the second day he disclosed to the authorities the identity of the culprits since his conscience bothered him.

Next, the matters where Francisco allegedly gave inconsistent answers refer to minor details which are usual among witnesses and do not affect his overall credibility. As aptly stated by the appellee, Francisco's answers refer to his recollection of time, and whether he stayed in De la Paz, San Simon, for seven or nine years at the time he testified or whether (on April 26, 1988) he went to Makati or remained in De La Paz are things which do not touch upon the occurrence of the crime. The said inconsistencies merely show that Francisco had not acquired a keen ability to estimate time or recall dates. What is important is that Francisco steadfastly testified that he had witnessed the actual commission of the crime that evening and gave positive identification of the perpetrators thereof.

Relative to the defense of alibi, all that the appellants stated was that they were at the San Pablo Libutad attending a jamboree with the children of Briones. The trial court rejected the said excuse reiterating that alibi is one of the weakest defenses that can be resorted to by an accused (People v. dela Cruz, 76 Phil. 601). We agree. "As a minimum requirement for the theory of alibi to be accepted, the accused must also demonstrate that it was physically impossible for him to be in the scene of the crime." (People v. Sambangan, 125 SCRA 726). Noteworthy is the fact that the place of the incident was a walking distance from the place where the appellants allegedly were. Since the appellants and Allied were positively identified by Francisco, and it was not shown that the latter had any evil motive to implicate the former, the defense of alibi cannot be accepted.

We also support the trial court's finding of conspiracy. It is undisputed that appellants and Allied were together in the store of Francisco prior to the incident. It was established that they mauled and manhandled Florencia Gutierrez, and thereafter dragged her inside her house. Their concerted acts in the perpetration of the offense show that conspiracy is present. It has been consistently held that conspiracy need not be proved by direct evidence but can be inferred from the acts of the accused showing concerted action and community of design (People v. Pineda, 157 SCRA 71; People v. Batahan, 157 SCRA 215; People v. Roncal, 79 SCRA 616, People v. Pagaduan, 29 SCRA 54).

Coming now to the constitutional rights of the appellants to remain silent and to counsel, the same cannot be held to have been violated. It is not disputed that the appellants were investigated by the police. However, it is important to note that the confession, admission or evidence obtained from the appellants was never offered in evidence by the prosecution. Their conviction was not based on said confession or admission but on the strength of the testimony of the lone eyewitness. Furthermore, appellants' claim of police brutality cannot be given weight as their allegation of torture was neither formally complained to the police nor confirmed by any medical report.

Finally, on appellants' claim that since their warrantless arrest is void, all the other proceedings, including their conviction, are also void, We find such claim undeserving of merit. It is unequivocally clear that no valid arrest

was made on the accused-appellants, the arrest having been made without any warrant at all. Neither can the appellants' arrest qualify as a lawful arrest without a warrant under Sec. 5 (b) of Rule 113 of the Rules on Criminal Procedure because the police officer who effected the arrest indubitably had no personal knowledge of facts indicating that the person to be arrested has committed the crime. It is eyewitness Francisco who had such personal knowledge. In like manner, We cannot accept appellee's bare allegation that Briones was a fugitive from justice at the time of the latter's arrest because it is not supported by the evidence on record. In sum, therefore, the warrantless arrest of the appellants is illegal. Nevertheless, such unavailing technicality cannot render all the other proceedings, including the conviction of the appellants, void. It cannot deprive the state of its right to convict the guilty when all the facts on record point to their culpability. In this regard, the case of *De Asis v. Romero*, 41 SCRA 235 finds application. Thus,

"In the reported decisions of this Court is a fairly excellent catalogue of dissertations on the previous position of personal freedom as part of the nation's heritage and the country's political consciousness. But although the existing legal order guarantees to every individual security against any non-due process type or form of restraint or detention, it nonetheless leaves it to and expects him to initiate the assertion of his corresponding right, in conformity with rules laid down or expounded by the institution which the people themselves, in their sovereign capacity, have by covenant established.

"One of the most important of these settled rules is that any objection to the procedure followed in the matter of the acquisition by a court of jurisdiction over the person of the accused must be opportunely raised before he enters his plea, otherwise the objection is deemed waived. (*De Asis v. Romero*, et al., 41 SCRA 235, citing *People v. Marquez*, 27 SCRA 808). (Italics supplied).

Immediately after their arrest, appellants Briones and Javier could have objected to the legality thereof due to the failure of the police officer to secure first a warrant for their arrest. Not only that, without having questioned the legality of their arrest, they even pleaded, on arraignment, to the information filed against them. Appellants' acts constitute a clear waiver of their right against unlawful restraint of liberty. Besides, it would be impractical, if not ridiculous to order the court a quo to set the appellants free then issue a warrant for their arrest, and try them all over again when appellants themselves have waived their right to object to such irregularity and when their conviction is truly based on overwhelming evidence.

ACCORDINGLY, the decision of the trial court convicting the appellants Mario Briones and Gerardo Javier of the crime of robbery with homicide is hereby **AFFIRMED**, with the modification that the death indemnity to the heirs is increased to P50,000.00 for each of the victims, in accordance with the policy adopted by the Court en banc on August 30, 1990. The award of moral and exemplary damages are also **AFFIRMED**.

SO ORDERED.

Padilla and Regalado, JJ., concur.
Melencio-Herrera, J., on leave.

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