

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. MACARIO SANTITO, JR., ALLAN CABALLERO, DIOSCORO CANDIA, BENJAMIN CAPANGPANGAN AND WILLIAM NARCISO, ACCUSED-APPELLANTS.*G.R. No. 91628. August 22, 1991*

Ponente: REGALADO, J.

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Appellants seek the reversal of the decision of the Regional Trial Court of Toledo City, Branch XXIX, in Criminal Case No. TCS-792,[1] finding them guilty of robbery with homicide and sentencing them to suffer the penalty of reclusion perpetua and to restitute jointly and severally the amount of P10,000.00, to indemnify the heirs of the victim in the amount of P30,000.00 and to pay compensatory damages representing funeral expenses in the amount of P23,240.00 and moral damages of P10,000.00. They were, however, "given full credit of their preventive imprisonment provided they complied with the rules and regulations (for) convicted prisoners." [2]

As found by the lower court, in the morning of January 20, 1987, Jovil Pesquera[*] was sent on an errand by his father-in-law, Paulino Rosario, to Abucayan and Arpili and was given P10,000.00 to buy cattle there. However, he was not able to buy any so he went home, arriving at Balamban at about 5:00 o'clock in the afternoon of the same day. He returned the money to his father-in-law who placed the same in the left side pocket of his trousers. After they had conversed for about two hours on business matters, his father-in-law then directly went with his son, Emmanuel Rosario, to the church plaza where his cattle were grazing, with the money still in his pocket since he never gave it to any person.[3]

At about 8:00 o'clock in the evening of that day, thirteen-year old Emmanuel Rosario and his father, Paulino Rosario, were accordingly at the church plaza in Balamban, Cebu, to get their three cows which were pastured there. Emmanuel noticed the presence of appellants Allan Caballero, Dioscoro Candia, William Narciso, Benjamin Capangpangan and Macario Santito, Jr. who were sitting near the statue in the place where the cows were tied. After Emmanuel had untied the ropes of the cows, appellants approached them and encircled Paulino. Allan Caballero "wrestled" the neck of Paulino while Macario Santito, Jr. grappled with the latter. The three other appellants attempted to help Caballero and Santito, Jr. by trying to participate in the wrestling. Out of fear, Emmanuel ran away and went to the store of his brother-in-law, Jovil Pesquera, to report the incident and obtain help.

Forthwith, he and Jovil ran to the plaza and saw appellants still around Paulino who was lying unconscious. Allan Caballero, Dioscoro Candia and Benjamin Capangpangan were holding the body of Paulino while William Narciso and Macario Santito, Jr. were standing by. As Emmanuel and Jovil approached the place appellants ran away toward the rear of the rural bank. Emmanuel went to his father and noticed that his face was covered with blood.[4] Jovil ran after appellants but failing to catch up with them, he went back to the place where his father-in-law was and told Emmanuel that he knew the said assailants. They checked the pockets of Paulino which they noticed were turned inside out and found out that the P10,000.00 in the left pocket of his trousers was

missing.[5] All the aforesaid facts and events were visible and known to them as the scene of the crime was lighted by a nearby mercury lamp and two fluorescent lamps.[6]

Emmanuel and Jovil then went to their mother and to the Philippine Constabulary detachment to report the incident. Sgt. Cueva and Sgt. Cabarrubias accompanied them back to the scene of the crime and recovered the following: one slipper of Paulino, one stone, one broken hollow block and one handkerchief. They then brought Pauline to the family store, then to the Balamban Emergency Hospital where he was treated.[7] On the advice of the doctor in Balamban, Paulino Rosario was brought to the Cebu Doctor's Hospital in Cebu City where he died of "intra-cranial hemorrhage, massive, with skull fracture, traumatic" that evening of January 20, 1987.[8]

Dr. Jesus P. Cerna, medical officer of the PC-INP, Cebu Metrodiscom, testified that he conducted a medico-legal examination and submitted a necropsy report on Paulino Rosario showing that the victim sustained hematoma on the temporal region, lacerated wounds on the occipital region and a depressed fracture on the right occipital region. He opined that the injuries could have been caused by a blunt instrument or hard object with a rough surface in view of the abrasions on the skin.[9]

On the strength of the foregoing facts, the following information was filed on July 17, 1987;

"That on or about the 20[th] day of January 1987 at 8:00 o'clock in the evening, more or less, inside the church plaza of Poblacion, Municipality of Balamban, Province of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused conspiring, confederating and mutually helping one another by means of violence against and intimidation upon persons, with intent to gain did then and there wilfully, unlawfully and feloniously take, steal and carry away without the consent of the owner thereof, cash in the amount of P10,000.00, Philippine currency, belonging to Paulino Rosario, to the damage and prejudice of the owner in the amount aforestated; that by reason or on occasion of said robbery and for the apparent purpose of enabling the accused to take, steal and carry away the amount aforementioned, the herein accused conspiring, confederating and mutually helping one another in pursuance of their intention to rob and to gain, with intent to kill, did then and there treacherously attack, assault and use personal violence upon said Paulino Rosario by inflicting several injuries which resulted (in) his instantaneous death.

"CONTRARY TO LAW."[10]

Upon arraignment, duly assisted by their respective counsel, appellants entered pleas of not guilty to the crime charged.[11] Thereafter, trial on the merits ensued.

Appellants offered alibi as their defense. Dioscoro Candia was allegedly viewing a betamax show in the house of Mayor Lito To-ong at Asturias, Cebu at about the time of the incident in question.[12] This was corroborated by his friend, Edilberto Ypil, who supposedly also viewed the show together with Candia.[13] Benjamin Capangpangan was reportedly at Lahug, Cebu City on that fateful night as he delivered money for the house rental of his sister, Virginia Capangpangan, who was then a tenant of Vernon Hermoso.[14] This was corroborated by Vernon Hermoso.[15] William Narciso claimed he was at Pasil, Cebu City at the time of the incident as he worked there as a fish laborer.[16] Allan Caballero declared that he was at a mah-jongg den at Sta. Cruz, Balamban, Cebu, just watching the gambling among several persons.[17] Macario Santito, Jr. asserted that he was at his home at Prensa, Balamban, Cebu.[18]

On the bases of the evidence presented by the parties, the trial court rendered the assailed decision. Appellants interposed the present appeal after their motion for new trial or reconsideration was denied, faulting the court a quo with this lone error:

"THE TRIAL COURT GRAVELY ERRED IN GIVING CREDENCE TO SUPPOSED EYEWITNESSES' ACCOUNTS DESPITE SUBSTANTIAL INCONSISTENCIES IN THEIR TESTIMONIES vis-a-vis THE

ENTRY IN THE POLICE BLOTTER, AND THE INCREDIBILITY OF THEIR TESTIMONIES."[19]

It is doctrinally entrenched that the evaluation of the testimony of witnesses by the trial court is received on appeal with the highest respect because it is the trial court that has the direct opportunity to observe them on the stand and detect if they are telling the truth or lying in their teeth. The assessment is accepted as correct by the appellate court — is indeed binding upon it — in the absence of a clear showing that it was reached arbitrarily.[20] Thus, the principle is firmly settled that the consequent findings of the trial court as to the credibility of witnesses are entitled to such a degree of respect by the appellate court.[21]

It is the contention of appellants that the testimonies of the prosecution witnesses are belied by Entry No. 08 dated January 21, 1987 in the Police Blotter of the Balamban Police Station. They make much of the fact that the said entry is not completely consistent with the prosecution witnesses' testimonies in open court, although there is no indication as to who supplied the data appearing in said entry. The pertinent part thereof which is relied upon by appellants is as follows:

"x x x Investigation conducted revealed that Paulino Rosario together with his son got their cows which were pastured at the church plaza. The son went ahead leaving his father. But because Paulino Rosario have (sic) not yet returned, his son went back and his son found out that Paulino Rosario was struck at his head and it was further discovered that the money amounting to P8,000.00 capital for purchase of livestock was lost. In this connection, investigation relative to the incident is going on."[22]

A police blotter is a book which records criminal incidents reported to the police.[23] Entries in official records, as in the case of a police blotter, are only prima facie evidence of the facts therein stated. They are not conclusive. The entry in the police blotter is not necessarily entitled to full credit for it could be incomplete and inaccurate, sometimes from either partial suggestions or for want of suggestion or inquiries, without the aid of which the witness may be unable to recall the connected collateral circumstances necessary for the correction of the first suggestion of his memory and for his accurate recollection of all that pertain to the subject. It is understandable that the testimony during the trial would be more lengthy and detailed than the matters stated in the police blotter.[24]

Furthermore, the said entry in the police blotter was never presented nor offered as evidence by the defense during the proceedings a quo.[25] Counsel for appellants, however, insists that said entry appears in "Annex 'A-1' to Urgent Ex-Parte Motion, Etc. filed by Atty. Crescencio N. Perolino for accused Santito found on pages 36, 37, 38, 39 and 40 of the Records." [26] This is merely a motion dated March 25, 1987 filed in the Municipal Circuit Court of Asturias-Balamban, Cebu for the early disposition of the preliminary investigation and the immediate remand of the same to the provincial fiscal.

Even assuming that the same had been identified in court, it would have no evidentiary value. Identification of documentary evidence must be distinguished from its formal offer as an exhibit. The first is done in the course of the trial and is accompanied by the marking of the evidence as an exhibit. The second is done only when the party rests its case and not before. The mere fact that a particular document is identified and marked as an exhibit does not mean it will be or has been offered as part of the evidence of the party. The party may decide to formally offer it if it believes this will advance its cause, and then again it may decide not to do so at all.[27]

In the case at bar, the defense did not identify or formally offer the said entry in the police blotter as evidence for appellants. Section 35, Rule 132 of the Rules of Court provides that the court shall consider no evidence which has not been formally offered; and it could not have been offered without being identified and marked as an exhibit. Hence, contrary to the desperate gambit of appellants, the said entry cannot be given any consideration at all.

Moreover, the imputed inconsistency in the testimonies of the prosecution witnesses on minor details reinforces rather than weakens their credibility[28] for the reaction of persons when confronted with a shocking incident varies,[29] as what happened to the obviously excited and agitated prosecution witnesses in this case when they reported the incident to the police. Testimonial discrepancies could be caused by the natural fickleness of memory which tend to strengthen, rather than weaken, credibility as they erase any suspicion of rehearsed testimony. It would have been more suspicious if complainant had been able to pinpoint with clarity or describe with precision the exact sequence of events. The most candid witness oftentimes makes mistakes but such honest lapses do not necessarily impair his intrinsic credibility.[30]

It is true that there was no eyewitness to the actual killing of Paulino Rosario in the mortiferous robbery subject of this case. However, the prosecution circumstantiates the guilt of appellants through the testimonies of its principal witnesses, Emmanuel Rosario and Jovil Pesquera, whose testimonies are positive, straightforward and clearly revelatory only of the truth of the facts they witnessed, without any dubious motive shown why they would bear false witness against appellants.

Essential in the success of the prosecution of an offense is the proof of the identity of the offender. In lieu thereof, the prosecution endeavors to gather all other evidence that will lead to the inescapable inference of one's culpability. Necessity justifies and both jurisprudence and law consistently accept resort to circumstantial evidence which consists in the piecing together of tiny bits of evidence with a view to ascertaining that the accused is the person responsible for the commission of the offense.[31] To technically require eyewitness testimony would be, in some cases, placing a premium against crime detection and granting a passport of immunity to a malefactor.

Circumstantial evidence is sufficient to convict where the circumstances point to the accused as the culprits. The following circumstances are sufficient to establish the culpability of appellants in this case beyond reasonable doubt: (a) appellants were all present and recognized by Emmanuel Rosario when he and his father arrived at the church plaza to get their cows; (b) appellants were the ones who approached Emmanuel and his father; (c) appellants concertedly encircled Paulino, "wrestled" his neck and held him; (d) they were still there when Emmanuel ran away from the place to seek help from his brother-in-law; (e) when Emmanuel and Jovil Pesquera returned to the church plaza, appellants were clustered around and holding the body of their father, whose face was covered with blood; (f) when appellants saw Emmanuel and Jovil, they ran away toward the rear of the rural bank; (g) they were the same persons who were chased by Jovil; and (h) the stone and the broken hollow block near the body of the victim were the probable and logical instruments used in the infliction of the cranial injuries on the victim.

In a similar case, it was held that direct evidence of the actual stabbing is not necessary when circumstantial evidence sufficiently establishes that fact. A resort to circumstantial evidence is, in the very nature of things, a necessity.[32] Circumstantial evidence is sufficient for conviction if (a) there is more than one circumstance, (b) the facts from which the inference is derived are proven, and (c) the combination of all the circumstances is such as to produce a conviction beyond reasonable doubt.[33] All the aforementioned requisites are present in the case at bar.

Furthermore, Emmanuel and Jovil easily identified appellants because the place where the crime occurred was sufficiently lighted. Where considerations of visibility are favorable and the witness does not appear to be biased against the accused, his or her assertions as to the identity of the malefactor should be normally accepted. This is more so when the witness is the victim or his near relative because such witness usually strives to remember the faces of the assailants.[34]

The same considerations hold true for the component of robbery in the composite crime charged. The untraversed evidence shows that the money returned by his son-in-law to the victim was placed in the latter's pocket and he never gave the same to any person or passed by any other place to leave the amount there; the victim went directly to the church plaza to get his cattle, presumably in a hurry to do so because of the lateness of the hour; he was then set upon and overpowered by appellants; when help came, he was lying bloody and unconscious, surrounded and his body being held by appellants and all his pockets turned inside out, all empty and with the money gone; appellants ran away upon the approach of the victim's son-in-law; and the money was never found or recovered. It bears further mention, for both the killing and the robbery, that the only interval of time in the entire series of events which did not have the benefit of an eyewitness was the few minutes from the time Emmanuel Rosario ran away from where his father was being ganged upon up to the time when he and Jovil Pesquera returned to the crime scene to rescue the victim.

Finally, the defense interposed by appellants was properly disregarded by the trial court. Their alibi is unavailing due to the positive identification by the prosecution witnesses. Alibi is admittedly and consistently considered the weakest defense an accused can concoct. In order to prosper, it must be so convincing as to preclude any doubt that the accused could not have been physically present at the place of the crime or its vicinity at the time of its commission.[35] Appellants failed to show that they could not have gone to the locus criminis from the place where they claimed to be at the time the crime was committed.

Thus, appellant Candia claimed that he was then watching a betamax show at Asturias, but Asturias and Balamban are just adjoining municipalities. Appellant Caballero alleged that he was watching a game in a mah-jongg den right in Sta. Cruz, Balamban barely a kilometer away. Appellant Capangpangan was supposedly in Cebu City to pay rentals on a house rented by his sister; but although the alleged receipts of payment were marked as exhibits, the same were not even presented in evidence. Appellant Santito, Jr. testified that he was in their house at Prensa, Balamban, around three kilometers away. Appellant Narciso claimed that he was then working in Pasil, Cebu City, carrying fish from the fishing boat to the market but although he had allegedly been working as such since 1986, he could not give the names of the pumpboat owner, any of his co-workers or the fish vendor for whom he carried the fish.[36] These facts were not denied. Furthermore, categorical declarations of witnesses for the prosecution on the details of the crime are more credible than the denials and uncorroborated alibi interposed by the accused.[37]

The Court is satisfied from its evaluation of the evidence that the trial court acted correctly in finding appellants guilty as charged. That appellants acted in conspiracy in the commission of the special complex crime is evident from their proven coordinated acts before, during and after the perpetration of the offense.

WHEREFORE, the assailed 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 policy of the Court.

SO ORDERED.

Melencio-Herrera, (Chairman), Paras, and Sarmiento, JJ., concur.
Padilla, J., see dissenting opinion.

[1] Penned by Judge Gualberto P. Delgado.

[2] Original Record, 270-271.

[*] This witness is also referred to in some portions of the record as Jovil Pequera.

- [3] TSN, December 9, 1987, 1-12, 36-37.
- [4] Ibid., September 21, 1987, 3-8.
- [5] Ibid., id., 11-12; December 9, 1987, 11-12.
- [6] Ibid., November 19, 1987, 4.
- [7] Ibid., September 21, 1987, 13-16.
- [8] Ibid., id., 18-19; Exhibit "G", Original Record, 15.
- [9] Ibid., January 28, 1988, 4-7.
- [10] Original Record, 1-2.
- [11] Rollo, 8.
- [12] TSN, April 21, 1988, 15.
- [13] Ibid., December 9, 1988, 4.
- [14] Ibid., July 25, 1988, 6.
- [15] Ibid., June 28, 1989, 4.
- [16] Ibid., October 13, 1988, 3.
- [17] Ibid., May 26, 1988, 5.
- [18] Ibid., November 10, 1988, 15.
- [19] Appellant's Brief, 3; Rollo, 61.
- [20] *People vs. Manalansan*, 189 SCRA 619 (1990).
- [21] *People vs. Catubig, et al.*, G.R. No. 71626, March 22, 1991.
- [22] Appellant's Brief, 6; Rollo, 64.
- [23] Moreno, *Philippine Law Dictionary*, 708, 3rd Ed., citing *People vs. Panganiban*, 20772-CR, December 6, 1979.
- [24] *Ford vs. Court of Appeals, et al.*, 186 SCRA 21 (1990).
- [25] Rollo, 3-4.
- [26] Ibid., 60. This is actually found on pages 40-44 of the Original Record.
- [27] *Interpacific Transit, Inc. vs. Aviles*, 186 SCRA 385 (1990).
- [28] *People vs. Obando, et al.*, 182 SCRA 95 (1990).
- [29] *People vs. Yagong*, 181 SCRA 479 (1990).
- [30] *People vs. Pasco, et al.*, 181 SCRA 233 (1990).
- [31] *People vs. Gamboa*, G.R. No. 91374, February 25, 1991.
- [32] *People vs. Roa*, 167 SCRA 116 (1988).

[33] *People vs. Agan*, 181 SCRA 856 (1990); Section 4, Rule 133, Rules of Court.

[34] *People vs. Beringuel, et al.*, G.R. Nos. 63753-54, December 21, 1990.

[35] *People vs. Cinco, et al.*, G.R. No. 79497, February 27, 1991.

[36] Memorandum for the Private Prosecution, Original Record, 244-247.

[37] *People vs. Besa*, 183 SCRA 533 (1990).

DISSENTING OPINION

PADILLA, J.:

I regret that I have to dissent, consistent with my opinion in G.R. No. 89376 (*People of the Philippines vs. Dionisio Lorenzo y De Ocampo, et al.*) with particular reference to the elements that make up the complex crime of robbery with homicide.

To sustain a conviction for robbery with homicide, it must be established with certitude that the killing was a mere incident to the robbery, the latter being the main purpose and objective of the culprit. A situation is contemplated where the homicide results by reason or on the occasion of the robbery (*People vs. Robante*, G.R. No. 69307, 16 October 1989, 178 SCRA 552, 561, citing *People vs. Aquino*, G.R. No. 50523, 29 September 1983, 124 SCRA 835).

Stated differently, in the complex crime of robbery with homicide, an intent to commit robbery must precede the taking of human life (*U.S. vs. Villorente*, 30 Phil. 59). It is not enough to suppose that the purpose of the author of the homicide was to rob; a mere presumption of such fact is not sufficient to sustain a conviction for the crime of robbery with homicide (*U.S. vs. Bosito*, 4 Phil. 100; *U.S. vs. Baguiao*, 4 Phil. 110).

Stated a little more differently, it is the intention of the actor which supplies the connection between the homicide and the robbery, which is necessary to constitute the complex offense; and if that intention comprehends the robbery, it is immaterial that the homicide may immediately precede instead of follow the robbery in point of time (*People vs. Manuel*, 44 Phil. 333).

In the present case, the prosecution, in my view, failed to prove that the homicide was committed for the purpose of committing the robbery. It did not present any evidence as to the motive which prompted the appellants to kill the deceased. The prosecution also failed to adduce evidence that the appellants knew of the existence of the amount of P10,000.00 in the left side pocket of the victim's trousers. The trial court merely presumed that the killing of the deceased was for the purpose of robbing him. Thus, it held:

"From the evidence presented to this court it indicates that the acts and behavior of the accused reveal their common purpose to assault inflict harm against Paulino Rosario. There was a concerted execution of that common purpose from which the elements of conspiracy can be reasonably deduced.

"The crime for which the accused stands charged is a special complex crime when by reason or occasion by robbery means that the homicide, serious physical injuries defined under par. 1 & 2 Art. 294 must be committed in the course or the cause of robbery. In the instant case, as testified to by Jovil Pesquera, he return to his father-in-law, the deceased the amount of P10,000.00 which the deceased placed in his left pocket (pp. 1-12 TSN Dec. 9, 1987 Aurelio Mansueto), before said deceased together with his son Emmanuel Rosario went to the plaza in order to get the three (3) cows which were pastured there. Prosecution witnesses Jovil Pesquera as well as Sgt. Eriberto Cabarrubias, testified that when they went to the crime scene they saw the deceased already lying down and the left side pocket already inverted where the amount of P10,000.00 was

placed and was already missing. Killing first the victim and thereafter taking the money from the body of the deceased is robbery with homicide (Pp. vs. Hernandez 46 Phil. 48). x x x.

"In the case at bar, taking into consideration the circumstances prior to and after the killing they could deduce that the victim was killed first then afterwards money was taken from his body, as his left side pocket was already inverted as observed by Jovil Pesquera." (Rollo, pp. 78-80) (*Italics supplied*)

It would appear, therefore, that the robbery (even if conclusively pinpointed against appellants, despite absence of direct evidence on this point) followed the homicide only as an afterthought. Robbery was not the motive or objective. Hence, the criminal acts of the appellants should be viewed as two (2) separate offenses (assuming that the robbery is conclusively attributed to appellants) and not as a single complex offense of robbery with homicide.

Moreover, in *People vs. Pacala*, G.R. No. L-26647, 15 August 1974, 58 SCRA 370, the Court held that:

"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 was 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 circumstances and not the complex crime of robbery with homicide."

In this case, the circumstantial evidence is insufficient and does not prove conclusively that robbery was committed by the appellants.

It results from the foregoing opinion that appellants are guilty of homicide or probably murder for the killing of Paulino Rosario but not of the complex crime of robbery with homicide.

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