

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ELISEO MARTINADO Y AGUILLON, HERMOGENES MARTINADO Y AGUILLON AND JOHN DOE, ALIAS “ROLLY”; ACCUSED-APPELLANTS.

G.R. No. 92020. October 19, 1992

Ponente: DAVIDE , JR., J.

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DAVIDE , JR., J.:

This is an appeal from the decision[1] of Branch 124 of the Regional Trial Court (RTC) of Kalookan City, in Criminal Case No. C-27858, promulgated on 2 February 1989, the dispositive portion of which reads:

"WHEREFORE, this Court finds both the accused ELISEO MARTINADO Y AGUILLON and HERMOGENES MARTINADO Y AGUILLON guilty beyond reasonable doubt of the crime of robbery with homicide as defined and penalized under paragraph 1 of Article 294 of the Revised Penal Code, as amended. There being no appreciable aggravating nor (sic) mitigating circumstances, this Court hereby sentences each of the accused to suffer imprisonment under the penalty of Reclusion Perpetua. The two accused are also directed to indemnify the heirs of Juan Matias jointly and severally the (sic) amount of P30,000.00; to return the money and the pieces of jewelry, subject matter of the robbery, and if unable to do so, to pay the entire value thereof in the total amount of P5,100.00 to the legal heirs of the victim and to pay the costs.

The accused HERMOGENES MARTINADO shall be credited in the service of his sentence with the full time that he has undergone preventive imprisonment pursuant to Article 29 of the Revised Penal Code provided the conditions prescribed thereon have been complied with.

SO ORDERED."

At the outset, this Court has to resolve the propriety of the interposed appeal insofar as accused Eliseo Martinado is concerned.

The promulgation of the decision on 22 February 1989 was made in his absence because he had earlier escaped on 6 August 1988,[2] exactly five (5) days after the defense rested its case, from the Kalookan City Jail. The escape, however, was reported to the trial court only on 8 August 1988.[3] Consequently, the trial court issued a warrant for his arrest on 10 February 1988[4] which was returned unserved on 28 February 1989 because "per information gathered from the resident (sic) thereat revealed that accused cannot (sic) be seen for long (sic) period of time." [5]

It was only on 10 April 1989 that Eliseo was re-arrested in Palo, Leyte by a Special Action Team of the Kalookan Police Station.[6]

On 2 March 1989, Atty. Domingo M. Ballon, counsel of record for Hermogenes and Eliseo, filed a notice of appeal for both accused. It reads:

"NOTICE OF APPEAL

Accused, by their undersigned counsel to this Honorable Court hereby gives (sic) notice, that they are appealing the decision of this Honorable Court, dated February 2, 1989, and promulgated on Feb. 22, 1989, convicting the accused to suffer and undergo an imprisonment of Reclusion Perpetua, to the Supreme Court, for the reason that said decision is contrary to law and evidence."[7]

In view of such appeal, the trial court issued on the same date an order directing the transmittal to this Court of the records of the case together with the transcripts of stenographic notes and exhibits.[8]

In promulgating judgment in absentia with respect to Eliseo, and in giving due course to the appeal of both accused, the trial court must have had in mind the third paragraph of Section 6, Rule 120 of the Rules of Court which reads:

X X X

"The proper clerk of court shall give notice to the accused personally or through his bondsman or warden and counsel, requiring him to be present at the promulgation of the decision. In case the accused fails to appear thereat the promulgation shall consist in the recording of the judgment in the criminal docket and a copy thereof shall be served upon the accused or counsel. If the judgment is for conviction, and the accused's failure to appear was without justifiable cause, the court shall further order the arrest of the accused, who may appeal within fifteen (15) days from notice of the decision to him or his counsel. (6a)."

Indeed, no cause for non-appearance during promulgation is more justified than the escape of the accused from the city jail where he was confined during the trial of the case. However, in the recent case of *People vs. Mapalao*,[9] decided on 14 May 1991, this Court, applying by analogy Section 8, Rule 124 of the 1985 Rules of Criminal Procedure, held that an accused who had escaped from confinement during trial on the merits and who remains at large at the time of promulgation of the judgment of conviction loses his right to appeal therefrom unless he voluntarily submits the jurisdiction of the court or is otherwise arrested within fifteen (15) days from notice of judgment. The reason therefor is that an accused who escapes from detention, jumps bail or flees to a foreign country loses his standing in court; unless he surrenders or submits to the jurisdiction of the court, he is deemed to have waived any right to seek relief therefrom. This Court then took the opportunity to suggest a modification of the last sentence of the aforequoted third paragraph of Section 6 of Rule 120. Thus:

"To this effect a modification is in order of the provision of the last sentence of Section 6, Rule 120 of the 1985 Rules of Criminal Procedure which provides:

'If the judgment is for conviction, and the accused's failure to appear was without justifiable cause, the court shall further order the arrest of the accused, who may appeal within fifteen (15) days from notice of the decision to him or his counsel'

It should provide instead that if upon promulgation of the judgment, the accused fails to appear without justifiable cause, despite due notice to him, his bondsmen or counsel, he is thereby considered to have waived his right to appeal. However, if within the fifteen (15) day period of appeal he voluntarily surrenders to the court or is otherwise arrested, then he may avail of the right to appeal within said period of appeal.

By the same token, an accused who, after the filing of an information, is at large and has not been apprehended or otherwise has not submitted himself to the jurisdiction of the court, cannot apply for bail or be granted any other relief by the courts until he submits himself to its jurisdiction or is arrested."[10]

If We were to apply this ruling to the case of Eliseo, his appeal should not be given due course. Considering, however, that Mapalao announces a new doctrine by making the second paragraph of Section 8, Rule 124 of the

Rules of Court, which reads:

"SEC. 8. Dismissal of appeal for abandonment or failure to prosecute. -- x x x

The Court may also, upon motion of the appellee or on its own motion, dismiss the appeal if the appellant escapes from prison or confinement or jumps bail or flees to a foreign country during the pendency of the appeal."

apply by analogy to the last sentence of the third paragraph of Section 6 of Rule 120, and that application thereof to Eliseo would be prejudicial to him, this Court, guided by the rule that laws shall have no retroactive effect unless the contrary is provided[11] and judicial decisions applying or interpreting the laws or the Constitution shall form part of our legal system[12] and, further taking into account the principle that once a doctrine of this Court is overruled and a different view is adopted, the new doctrine should be applied prospectively and not retroactively to parties who had relied on the old doctrine and acted on the faith thereof,[13] hereby declares that the rule enunciated in Mapalao should not be applied to Eliseo. Thus, his appeal is hereby given due course.

Having cleared the way for the appeal of both accused, We shall now take up the appeal proper.

Accused Hermogenes Martinado and Eliseo Martinado, together with a certain John Doe alias "Rolly" who remains to be at large, were originally charged with the crime of murder in an Information prepared and filed by Assistant City Fiscal Arturo A. Rojas on 17 November 1986.[14] The information fails to mention anything about robbery. Consequently, a motion for reinvestigation was filed by the offended party. On 4 March 1987, an Amended Information[15] was filed by 1st Assistant City Fiscal Rogelio M. de Leon charging the accused with the crime of Robbery with Homicide. This was further amended on 10 March 1987 by a 2nd Amended Information,[16] the accusatory portion of which reads:

"That on or about the 14th day of November 1986 in Caloocan City, Metro-Manila and within the jurisdiction of this Honorable Court, the above-named accused, conspiring together and mutually helping with one another, with intent of (sic) gain and with intent to kill, by means of violence and intimidation employed upon the person of JUAN MATIAS y REYES that is by attacking and stabbing the latter with a sharp pointed instrument, did then and there willfully, unlawfully and feloniously take, rob and carry away the following articles, to wit.:

1. Seiko men's watch

(5) worth -- P 800.00

2. Men's ring worth -- P1,800.00

3. Wallet containing

cash in the amount of -- P2,500.00

Total -- P5,100.00

all belonging to the said Juan Matias y Reyes, to the damage and prejudice of the latter in the aforementioned total amount of P5,100.00; and as a result thereof, Juan Matias sustained serious physical injuries, which injuries caused his death (DOA) at the Quezon City General Hospital.

Contrary to Law."

Eliseo and Hermogenes Martinado were arraigned with the assistance of counsel on 22 September 1987;[17] both entered pleas of "Not Guilty". The other accused, John Doe @ Rolly, has not been formally identified and is still

at large. Immediately after arraignment, a motion for bail was heard by the trial court; the same was eventually denied.[18]

Trial subsequently ensued with the prosecution presenting Margarita Padrinao, Elizabeth C. Carillo, Dr. Mariano Cueva, Jr. (Medico-Legal Officer), Nicanor Matias, Angel Nieto, Gerardo Arellano, P/Sgt. Manuel Buenaobra and David Nerza; for the defense, both accused were presented.

On 22 February 1989, the trial court promulgated its decision based on the prosecution's version of the incident summarized as follows:

"The following is the version as shown by the evidence adduced by the Prosecution:

At about 6:15 o'clock in the afternoon of November 14, 1986, Margarita Padrinao, a maid, was watching television at the house of her master, Juan Matias. She then entered the sari-sari store of her master which is three 'arms' length away from the place where she was watching television in order to feed the pigs. She saw Juan Matias tending the sari-sari store. She also saw two customers drinking softdrinks outside the window grilles of the store. (TSN-Nov. 10, 1987, M. Padrinao, pp. 6-7). She identified them as Eliseo and Hermogenes Martinado.

At about this time, Elizabeth Carillo, a neighbor and a government employe (sic), passed by the same sari-sari store on her way to make a phone call at a house located at nearby Villa Maria Subdivision. She saw Juan Matias attending to three customers drinking softdrinks at the sari-sari store. She identified them as Eliseo Martinado, Hermogenes Martinado and 'Rolly'. (TSN-Nov. 19, 1987, E. Carillo, pp. 6-8).

A short while later, Margarita who had just fed the pigs heard a loud snore coming from the store. She hurriedly went back to the store and as she reached the front of the store she saw Eliseo and Hermogenes helping one another in stabbing Juan Matias. (TSN-Nov. 10, 1987, M. Padrinao, pp. 8; 32). Each of these accused was armed with pointed, thin instruments which each used in the stabbing. The stabbing took place inside the store near the place where rice was being kept. Margarita then shouted in a loud voice, 'Tulungan ninyo po kami.' The two accused then fled thru the gate at the fence of the house. After she shouted, some people approached the store but Hermogenes and Eliseo Martinado had already fled. (TSN-Nov. 19, 1987 M. Padrinao, pp. 9-10). She then approached Juan Matias who lay on the flooring of the store. Mrs. Dominga Matias, the wife of Juan, likewise approached Juan Matias whom they found to be bloodied with several stab wounds at (sic) the neck, breast and abdomen. (TSN-Nov. 19, 1987, M. Padrinao, pp. 11).

In the meantime, Elizabeth Carillo had to pass the said store on her way back to her residence, having failed to contact a friend thru the phone. She heard somebody shouting 'saklolo' and she saw three persons running from the sari-sari store of Juan Matias. These were the same three persons she previously saw drinking softdrinks. 'Rolly' was running ahead of the other two, Eliseo and Hermogenes Martinado. Then she saw Rolly stop and retrace his steps to pick up a watch near the gate of the fence surrounding the house of Juan Matias before resuming his flight. The two brothers continued to run away. Eliseo was seen holding something in his bloodied hand and Hermogenes was also seen holding something in his hand which was bloodied. Elizabeth then entered the sari-sari store and she saw Juan Matias lying down, face upward, inside the sari-sari store and had (sic) stab wounds on (sic) his bloodied neck. He was still snorting, so Elizabeth called for help to bring Juan to the hospital. (TSN-Nov. 10, 1987, E. Carillo, pp. 8-11). Juan was brought to the Quezon City General Hospital where he was pronounced dead on arrival.

At about the same time, Angel Nieto, the Tanod executive officer of the Barangay, was at the house of his brother also at Deparo street when he heard people shouting 'Harangin, harangin.' He went out of the house into the street and he was able to see three men coming from the direction of the house of Juan Matias and being chased by the residents. He was able to observe two of the said three men. These two men had bloodied hands and bloodied clothes. He then asked the residents why they were chasing the three men and they replied

that these men had just stabbed Juan Matias. (TSN-Dec. 22, 1987, A. Nieto, pp. 4-5)

Gerardo Arellano, a Barangay tanod of the place where the incident occurred, also heard the aforesaid shouting from his house which is located also at Deparo street. He came to know from Elizabeth Carillo and Margarita Padrinao that Juan Matias was stabbed to death. Together with other tanods and residents of the place, they began looking for Eliseo Martinado, Hermogenes Martinado and Rolly as these were the suspects mentioned by Elizabeth Carillo and Margarita Padrinao. (TSN-Feb. 9, 1988, G. Arellano, pp. 5-6).

Gerardo Arellano and his companions proceeded to the house of 'Rolly' at the Sterling compound and after they were granted permission by the wife of 'Rolly' to enter the house to look for 'Rolly', they entered. They found Hermogenes Martinado under a lavatory trembling. They then went to the Visayan Motors and after obtaining permission from the owner thereof, they went inside the premises and found Eliseo Martinado who was packing his clothes ready to leave. (TSN-Feb. 9, 1988, Arellano, pp. 9-13). Eliseo and Hermogenes Martinado were invited to go to the house of Juan Matias and both were identified by Elizabeth Carillo and Margarita Padrinao as two of the persons (sic) who barged into the house of Juan Matias. (TSN-Feb. 9, 1988, Arellano p. 14). The two suspects were then brought to the Urduja Police Sub-Station and were then turned over to Sgt. Manuel Buenaobra of the Caloocan City Police Station. They were later brought to the Caloocan City Police Headquarters by Sgt. Buenaobra. (TSN-Feb. 15, 1988, M. Buenobra, p. 8).

During the investigation conducted at the house of Juan Matias by the police on November 14, 1986, Margarita Padrinao discovered that the Seiko V watch worn everyday by Juan Matias was no longer in his wrist. She also found that the wallet which Juan Matias kept at the back pocket of his pants was missing. (TSN-Nov. 10, 1987, M. Padrinao, pp. 16-17).

This robbery was reported by Dominga Matias, the widow of the victim to the Caloocan City Police Headquarters on November 16, 1986. (TSN-Feb. 15, 1988, M. Buenaobra, p. 16). (See Police Blotter, page 188 of the Caloocan City Police Station dated November 16, 1986, EXHIBIT "J"). Mrs. Dominga Matias listed the articles found missing from their store at Deparo street, Caloocan City, after the death of Juan Matias, as follows:

Seiko wristwatch ----- P 800.00
Gold ring ----- P1,800.00
Cash contained in
missing wallet ----- P2,500.00

Nicolas Matias, a son of Juan Matias, corroborated the loss of the above articles and estimated their value in his testimony of December 21, 1987. He discovered the loss on the night of November 14, 1986, after reaching the Quezon City General Hospital where his mother told him that these articles could no longer be found in the body of the victim. When he returned to his father's residence at Deparo street, Caloocan City, also on the evening of November 14, 1986, he verified, after a search of the sari-sari store and the house that those articles were indeed missing. (TSN-Dec. 21, 1987, N. Matias, pp. 4-6).[19]

x x x

It is undisputed that Juan Matias, 70 years old, died on November 14, 1986. The cause of death was hemorrhage secondary to stab wounds, neck and chest. (EXHIBIT "E"). Dr. Mariano Cueva, NBI Medico-Legal Officer, stated that he found contusions on the front portion of the neck of the victim; 4 incised wounds, one on the left arm and three on the left forearm; four stab wounds, one over left front of the neck and three at the left front chest. (TSN - Nov. 20, 1987, Dr. Cueva, pp. 7-8). (EXHIBITS "F" and "G"). The most mortal of the wounds was that found over the left front chest. (TSN - Nov. 20, 1987, pp. 8-9).[20]

x x x

Dr. Cueva narrated that the incised wounds found on the body of the victim could have been brought about by contact with a sharp cutting edge like the edge of a knife or sharp metal object. He also said that the stab wounds could have been produced by a pointed, single-edged or single-bladed instrument like a kitchen knife or dagger. He added that the number of wounds inflicted on the victim does not preclude the fact that there was more than one assailant using similar instruments. (TSN - Nov. 20, 1987, pp. 9-10; 20)."[21]

The trial court concluded that the prosecution established convincingly that Juan Matias was robbed at about 6:30 o'clock in the evening of 14 November 1986 by the accused Hermogenes and Eliseo Martinado who conspired with each other and with Rolly. Under the circumstances above narrated, the special complex crime of robbery with homicide penalized under paragraph 1 of Article 294 of the Revised Penal Code was committed. The motive of the accused was to rob Juan Matias.

As earlier adverted to, the accused through counsel filed a Notice of Appeal on 2 March 1989. Despite the trial court's order to forward the records of the case to this Court, the clerk of court of the court a quo erroneously transmitted the same to the Court of Appeals on 19 February 1990.[22] The latter subsequently forwarded the records to this Court on 22 February 1990.[23]

In the Resolution dated 12 March 1990, We accepted the appeal interposed by the accused.[24]

The accused filed their Appellants' Brief on 20 December 1990[25] while the Office of the Solicitor General filed the Brief for the Plaintiff-Appellee on 30 January 1991.[26]

The appeal is anchored on the following assignment of errors:

"I

THE TRIAL COURT ERRED IN HOLDING THAT ACCUSED HERMOGENES MARTINADO AND ELISEO MARTINADO ARE GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF ROBBERY WITH HOMICIDE.

II

THE TRIAL COURT ERRED IN HOLDING THAT ACCUSED-APPELLANTS HERMOGENES MARTINADO AND ELISEO MARTINADO CONSPIRED WITH A CERTAIN 'ROLLY' TO COMMIT THE CRIME OF ROBBERY WITH HOMICIDE."[27]

In discussing the first error, appellants focus on the arguments that proof of robbery is wanting and that their guilt for the homicide has not been proven beyond reasonable doubt.

As to the first, the appellants underscore the fact that it was only two (2) days after the alleged killing that the loss of the victim's personal belongings was reported to the police authorities. They then suggest that "[t]he wristwatch and the money contained in the wallet could have been stolen when the cadaver was already in the Hospital or probably in the Morgue;"[28] that Elizabeth Carillo's declaration on the witness stand that she saw a certain "Rolly" return and pick up a watch as he, together with the accused, were fleeing from the victim's house, is not sufficient to support the conclusion that a robbery was committed as the watch could have been Rolly's; and that the loss of money was not proven and the witness who claims to have seen the alleged killing, Margarita Padrinao, did not testify on the actual taking of property.

We have closely perused through the entire records of the case and are convinced that the crime of robbery was not proven to have been committed. No conclusive evidence proving the physical act of asportation thereof by the accused themselves was presented by the prosecution.[29] This Court takes note of the fact that the original information filed three (3) days after the incident in question was for Murder and no hint whatsoever of robbery

was made therein. The evidence further discloses that it was only at around 10:30 o'clock in the evening of 16 November 1986 that the widow of Juan Matias reported to the Investigation Division of the Kalookan City Police Station that "they found out that the Seiko wristwatch worth P800.00; GOLD ring worth P1,800.00 and the amount of P2,500.00 contained in the wallet of his (sic) slain husband, JUAN MATIAS were missing presumably (sic) taken by suspects (sic)."[30]

It is settled that in order to sustain a conviction for the crime of robbery with homicide, it is imperative that the robbery itself be proven as conclusively as any other essential element of a crime. In the absence of such proof, the killing of the victim would only be simple homicide or murder, depending on the absence or presence of qualifying circumstances.[31]

The trial court based its finding of the existence of robbery on Margarita Padrinao's and Elizabeth Carillo's respective testimonies. There is also the testimony of the victim's son, Nicanor Matias, a substantial part of which is hearsay as he constantly alluded to the information his mother had given him. While Padrinao gave the following statements during her direct examination:

"FISCAL SILVERIO:

x x x

Q: And what did the police find out during the investigation, if any?

A: Things were missing, sir.

Q: Did you come to know what were those missing things?

A: Watches (sic), wallet.

Q: How did you come to know that?

A: Because he was not wearing his wristwatch and his wallet was missing.

Q: Whose wallet was missing?

A: Juan Matias', sir.

Q: Do you know what kind of watch is owned or being worn by Juan Matias?

A: Seiko V, sir.

Q: How did you come to know that?

A: I used to see that watch because I have been staying there for a long time.

Q: You said that wallets (sic) was missing, do you know if there are (sic) money contained in that wallet?

x x x

COURT:

How did you know that a wallet was missing?

A: Because the wallet was no longer at the back pocket of his pants."[32]

Carillo declared that:

"FISCAL SILVERIO:

Q: When you said that you saw Rolly, Eliseo and Hermogenes Martinado running out from the sari-sari store, what happened next, if any?

A: I saw Rolly returned (sic) and picked (sic) up something, sir.

Q: Did you see what Rolly picked up at that time?

A: Yes, sir.

Q: What was that?

A: A watch, sir.

Q: Could you describe the watch picked up by Rolly at that time?

A: I cannot describe the make, sir, the trademark but it is a watch.”[33]

It is at once apparent that nobody was able to observe that immediately before the incident, Juan Matias was wearing a wristwatch and a gold ring and had a wallet in his pocket which contained money; moreover, nobody witnessed the actual taking by the accused of Juan Matias' personal belongings. While Margarita Padrinao saw Matias being repeatedly stabbed, she failed to notice the latter being actually divested of his personal effects. Further scrutiny of Padrinao's testimony reveals that at the time she declared that "things were missing," the victim was no longer in front of her for she had likewise testified that the latter was rushed to the hospital soon after the stabbing. The investigation during which she uttered such statements was conducted by police authorities who arrived at the crime scene long after the victim had been removed. It would thus be highly doubtful that Padrinao could credibly assert right then and there that the said items were missing as, presumably, she was not able to get a clear glimpse of the victim as he was being brought to the hospital. In fact, if there was any person who could have testified about the missing items, it would have been Elizabeth Carillo. Together with a neighbor, the victim's wife and brother, she brought Juan Matias to the hospital where the latter was pronounced dead on arrival.[34]

With respect to Carillo's testimony, the fact that Rolly returned and picked up a watch is no proof at all that the watch belonged to the victim for unfortunately, the prosecution failed to elicit from her any information about the precise place where the watch was picked up in relation to the place where Juan Matias was stabbed, or the person possessing the same before it was picked up. In short, she did not testify that the said watch belonged to and was taken from the victim. Absent such proof, it is highly possible that the watch could have been, as suggested by the accused, Rolly's.

The testimony of Nicanor Matias, on the other hand, merely recounts his own discovery that certain items were missing when he arrived at his parents' house after the incident; he also described these missing items and estimated their respective values. As earlier observed, much of the information he volunteered was based on what his mother had told him, thus making the same objectionable on the ground of hearsay.

As basis for the assertion that the crime of homicide has not been proven beyond reasonable doubt, both accused emphasize that "the contradiction between the statement of Ms. Margarita Padrinao in her Affidavit to the effect that 'Rolly' was the last person to leave the sari-sari store and was in fact seen by her 'INANG' holding a knife, and that of her testimony in Court to the effect that she did not see 'Rolly' anymore for she immediately went outside the store shouting for help, had created a semblance of falsehood. "[35]

The suggested flaw, more apparent than real, betrays strained and tenuous reasoning. Padrinao's aforesaid statement does not at all clash with her testimony during cross-examination. All that she declared during the latter was that:

“ATTY. BALLON:

Q: I am going to quote your answer: ‘Oho, ito hong dalawang ito (affiant pointing to the persons inside the Investigation Office, who gave their names as Eliseo Martinado y Aguillon alias ELISEO, 20 years old, single, helper, native of Dagami, Leyte, resident of Visayan Auto Repair Shop, Deparo, Caloocan City, and HERMOGENES MARTINADO y Aguillon, 23 years old, single, laborer, native of Dagami, Leyte, resident of Sterling Subd., Caloocan City) at isa pa na magbobote ang pangalan ay Rolly’, did you give that answer?

A: Yes, sir, because they were three but I did not see the third man because I only reached (sic) inside the store the two (referring to the two accused).

Q: Now, could you say now, Miss Padrinao, that there were three persons inside the store?

x x x

Q: Was this Rolly inside the store when you saw him?

A: I did not see him inside the store but the ones I reached (sic) inside the store wer, Eliseo and Hermogenes Martinado, because right after I saw it (sic) I immediately went out and shouted.

Q: And so it is clear that you did not see the actual stabbing of Mang Juan, during the stabbing of Mang Juan you did not see this Rolly?

A: Yes, sir.

Q: And this Rolly was not inside the store before Mang Juan was stabbed?

A: Yes, sir.

x x x

COURT:

Why did you mention in your affidavit that the three who killed Juan Matias were Eliseo, Hermogenes and this Rolly who was magbobote (sic)?

A: I did not see that Rolly anymore because as I have said when I saw the two (referring to Eliseo and Hermogenes) helping one another in stabbing Mang Juan, I ran away and shouted for help.

x x x

ATTY. BALLON:

Q: While (sic) ago, during your direct testimony and even on the cross examination by this representation you stated categorically that you only saw two people drinking softdrinks in the store of Mang Juan on November 14, 1986, at about 6:00 o' clock in the afternoon and in your statement Exhibit "A" you stated that also a certain Rolly magbobote who (sic) was with the two drinking softdrinks, which of them is now correct? There seems to be a conflict.

A: I only saw the two of them drinking softdrinks, that is what I saw.”[36]

Padrinao's failure to notice Rolly inside the store could be explained by the fact that she immediately left upon seeing Juan Matias being stabbed by the two (2) accused.[37] It is very likely that this third person, Rolly, could have just been hidden or covered by the other two. Thus, it was only when the stabbing was consummated that she saw all three because they naturally had to leave the scene of the crime. It is to be observed that Rolly's presence was confirmed by two (2) other witnesses, namely Elizabeth Carillo[38] and Angel Nieto.[39]

Besides, such a minor contradiction does not affect the credibility of a witness. Inconsistencies in the testimonies of witnesses which refer to minor and insignificant details cannot destroy their credibility. In fact, such minor inconsistencies guarantee sincere and candid evidence of what actually transpired.[40] Discrepancies in minor details do not impair the credibility of a witness. In the course of a prolonged direct examination, more so during cross-examination, the witness is usually subjected to unfriendly questioning. As a result thereof, it is usually the case that the witness, uncomfortable and fidgety in a courtroom scene, may often fall into lapses. It is not infrequent for a witness to commit minor mistakes in his narration of the facts.[41] Rather than affect the credibility of the witnesses, they are badges of truthfulness and candor.[42]

Margarita Padrinao's narration of the incident is coherent in its essential parts and intrinsically believable; hence, it must be accorded due deference.[43]

In any event, even if we are to give weight to the implication suggested by the said discrepancy, only Rolly's liability would be put in doubt as it is only as to his participation that there would exist any reservation or question. As to the accused-appellants, Padrinao was firm in her identification of them.

Coming to the second assigned error, this Court is hard put at giving the same any credence. For one, counsel for the accused harps once again on the alleged inconsistencies that supposedly plague the testimonies of the witnesses; this issue has already been resolved and needs no further elaboration.

Furthermore, the accused capitalize on the Medico-Legal Officer's statement that "the wounds would have been inflicted by one person because of the nature of the wounds." [44] The accused would attempt to mislead this Court by such conclusion because they deliberately omitted the phrase immediately preceding the quoted declaration -- "It is possible" [45] Thus, all that the said witness did was to suggest that there could have been one (1) assailant. It was only the accused who made the categorical declaration to that effect.

Finally, the accused suggest that the evidence necessary to prove conspiracy was not established because "at the time the Martinado Brothers were accounted for, Hermogenes Martinado was at the house of Aling Espie, while Eliseo was at Visayan Auto Repair Shop at Reparo (sic) Street, Kalookan City." [46]

We have time and again ruled that alibi is at best a weak defense and easy of fabrication.[47] It cannot prevail over a positive identification made by a prosecution witness.[48] For such a defense to prosper, it is not enough to prove that the accused was somewhere else when the crime was committed but that he must also demonstrate that it was physically impossible for him to have been at the scene of the crime.[49]

As found by the trial court, both accused were apprehended in the vicinity of the crime scene shortly after the felony was committed. While Hermogenes was found trembling under the lavatory in Rolly's house, Eliseo was accosted in the premises of the Visayan Auto Repair Shop in the act of packing his clothes. Such deportment on the part of the two accused displays guilty consciences. On the part of Eliseo Martinado, such a conclusion is even bolstered by the fact that he escaped from the Kalookan City Jail on 6 August 1988.[50] Flight of the accused is an indication of his guilt or of a guilty mind.[51]

As to conspiracy, the trial court correctly declared that:

"The conspiracy was shown by the fact that the two accused were seen buying and drinking softdrinks together with 'Rolly' at the store of the victim and by the fact that they fled together. (People vs. Ramos, 122 SCRA 139). The Prosecution has also established that the same two accused and 'Rolly' helped each other in stabbing the accused (sic), each using a pointed and bladed instrument in stabbing the same victim to death." [52]

This Court hereby adopts the aforequoted exposition. These facts prove beyond reasonable doubt that the accused

had a common purpose and were united in its execution. There is conspiracy when two (2) or more persons come to an agreement concerning the commission of a felony and decide to commit it.[53] Conspiracy to exist does not require an agreement for an appreciable period prior to the occurrence; it exists if, at the time of the commission of the offense, the accused had the same purpose and were united in its execution.[54] Direct proof of previous agreement to commit a crime is not necessary. It may be deduced from the mode and manner in which the offense was perpetrated,[55] or inferred from acts of the accused themselves when such point to a joint purpose and design, concerted action and community of interest.[56] Conspiracy having been adequately established by the testimony of the prosecution witnesses, all the conspirators -- -the accused herein -- are liable as co-principals regardless of the extent and character of their respective individual participation for in contemplation of law, the act of one is the act of all.[57]

As We have earlier declared, however, the finding that robbery was committed on the occasion of the killing cannot be sustained. Hence, the accused are liable only for homicide. This Court, nevertheless, appreciates against both accused the generic aggravating circumstance of abuse of superior strength[58] which although not alleged in the second amended information, was duly proven by the prosecution and may therefore be properly taken into consideration.[59] The victim, Juan Matias, a septuagenarian, was unarmed at the time he was assaulted; Eliseo Martinado was about 21 years old[60] while Hermogenes Martinado was only 28 years old.[61] They both ganged up on the old man who never had the slightest inkling that the accused, who pretended to be his customers, would attack him simultaneously with bladed instruments. It is obvious that they took advantage of their individual and collective strength. The penalty then for the crime of homicide under Article 249 of the Revised Penal Code must be imposed in its maximum period pursuant to the third paragraph of Article 64 of said Code.

Conformably with the policy of this Court enunciated in several cases, the indemnity for the death of Juan Matias should be increased to P50,000.00.

WHEREFORE, the Decision of Branch 124 of the Regional Trial Court of Kalookan City in Criminal Case No. C-27858 finding both accused Eliseo Martinado y Aguillon and Hermogenes Martinado y Aguillon guilty beyond reasonable doubt of the crime of robbery with homicide defined and penalized under paragraph 1 of Article 294 of the Revised Penal Code is hereby modified. As modified, the two accused are found guilty of the crime of Homicide under Article 249 of the Revised Penal Code. In view of the aggravating circumstance of abuse of superior strength, and the absence of any mitigating circumstance to offset it, and applying the provisions of the Indeterminate Sentence Law, Hermogenes Martinado y Aguillon is hereby sentenced to suffer an indeterminate penalty ranging from Ten (10) years and One (1) day of prision mayor maximum as minimum to Seventeen (17) years, Four (4) months and One (1) day of reclusion temporal maximum as maximum.

Accused Eliseo Martinado, however, shall not be entitled to the benefits of the Indeterminate Sentence Law as he had escaped from confinement.[62] Accordingly, he is hereby sentenced to suffer the penalty of imprisonment of Seventeen (17) years, Four (4) months and One (1) day of reclusion temporal maximum.

The indemnity for the death of the deceased Juan Matias is hereby increased from P30,000.00 to P50,000.00.

The Decision is AFFIRMED in all other respects.

SO ORDERED.

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

[1] Original Records, 282-289; Rollo, 24-31;

[2] Original Records, 281.

[3] Id., 235.

[4] Id., 270-271.

[5] Id., 293-294.

[6] Id., 295.

[7] Original Records, 291.

[8] Id., 292.

[9] 197 SCRA 79 [1991].

[10] People vs. Mapalao, supra., at page 88.

[11] Article 4, Civil Code.

[12] Article 8, Civil Code.

[13] People vs. Jabinal, 55 SCRA 607 [1974]; People vs. Santayana, 74 SCRA [1976].

[14] Rollo, 5.

[15] Id., 6.

[16] Id., 7.

[17] Original Records, 81.

[18] Id., 135.

[19] Original Records, 283-285; Rollo, 25-27.

[20] Id., 286.

[21] Id., 288.

[22] Rollo, 2.

[23] Id., 1.

[24] Id., 32.

[25] Id., 46.

[26] Id., 50.

[27] Appellant's Brief, 4; Rollo, 46.

[28] Id., 7; Id., 46.

[29] People vs. Espera, 175 SCRA 728 [1989].

[30] Exhibit "J".

[31] People vs. Pacala, 58 SCRA 370 [1974]. See also US vs. Isidro Paddit, 1 Phil. 426 [1902]; People vs. Barruga, 61 Phil. 318 [1935]; People vs. Cha, 45 Phil. 137 [1923]; People vs. Mones, 58 Phil. 46 [1933].

[32] TSN, 10 November 1987, 17.

[33] TSN, 19 November 1987, 9.

[34] TSN, 19 November 1987, 11.

[35] Appellant's Brief, 11; Rollo, 46.

[36] TSN, 10 November 1987, 21-24.

[37] Id., 23; Exhibit "A".

[38] TSN, 19 November 1987; 7-10; 23-27.

[39] TSN, 22 December 1987, 4-5; 8.

[40] *People vs. Resayaga*, 54 SCRA 350 [1973]; *People vs. Pielago*, 140 SCRA 418 [1985].

[41] *People vs. Reception*, 198 SCRA 670 [1991].

[42] *People vs. Belibet*, 199 SCRA 587 [1991]; see also *People vs. Oquiño*, 122 SCRA 797 [1983]; *People vs. Demeterio*, 124 SCRA 914 [1983]; *People vs. Manalo*, 135 SCRA 84 [1985]; *People vs. Dava*, 149 SCRA 582 [1987]; *People vs. Ranola*, 172 SCRA 43 [1989]; *People vs. Pasco*, 181 SCRA 233 [1990]; *People vs. Bolima*, 195 SCRA 614 [1991].

[43] *People vs. Arbolante*, 203 SCRA 85 [1991]; see also *People vs. Ansing*, 196 SCRA 374 [1991].

[44] Appellant's Brief, 22; Rollo, 46.

[45] TSN, 20 November 1987, 20.

[46] Appellant's Brief, *op. cit.*, 22; Rollo, *op. cit.*, 46.

[47] *People vs. Ampo-an*, 187 SCRA 173 [1990]; *People vs. Bocatcat, Sr.*, 188 SCRA 175 [1990].

[48] *People vs. Clores*, 184 SCRA 638 [1990]; *People vs. Arceo*, 187 SCRA 265 [1990]; *People vs. Cagalingan*, 188 SCRA 313 [1990]; *People vs. Tasarra*, 192 SCRA 266 [1990]; *People vs. Reception*, *supra.*; see also *People vs. Beringuel*, 192 SCRA 561 [1990].

[49] *People vs. Arceo*, *supra.*; *People vs. Lugto*, 190 SCRA 754 [1990].

[50] Rollo, 29.

[51] *U.S. vs. Alegado*, 25 Phil. 510 [1913]; *U.S. vs. Sarikala*, 37 Phil. 486 [1918]; *People vs. Garcia*, G.R. No. 69581, 21 May 1992.

[52] Original Records, 288; Rollo, *op. cit.*, 30.

[53] Article 8, Revised Penal Code.

[54] *People vs. Cadag*, 2 SCRA 388 [1961]; *People vs. Clarit*, 3 SCRA 331 [1961]; *People vs. Villanueva*, 5 SCRA 672 [1962]; *People vs. Tiongson*, 12 SCRA 402 [1964].

[55] *People vs. Pudpud*, 39 SCRA 618 [1971]; *People vs. Mejia*, 55 SCRA 453 [1974]; *People vs. Ogapay*, 66 SCRA 209 [1975].

[56] *People vs. Lunar*, 45 SCRA 119 [1972]; *People vs. Custodio*, 47 SCRA 289 [1972]; *People vs. Cardenas*, 56 SCRA 631 [1974].

[57] People vs. Pareja, 30 SCRA 693 [1969].

[58] Paragraph 15, Article 14, Revised Penal Code.

[59] People vs. Acusar, 82 Phil. 490 [1948]; People vs. Peje, 99 Phil. 1052 [1956]; People vs. Jovellano, 56 SCRA, 156 [1974].

[60] He was 23 years old when he testified on 31 May 1988; TSN, 31 May 1988, 2.

[61] He was 30 years old when he testified on 5 July 1988; TSN, 5 July 1988, 2.

[62] Act No. 4103, as amended.

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