

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. SANTIAGO SERVILLON Y FILISIS, ACCUSED-APPELLANT.*G.R. No. 92154. September 12, 1994*

Ponente: BELLOSILLO, J.

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Death came to 19-year old Enrico like a thief in the night - quick, cruel, unexpected. It happened after dinner on 5 December 1987 at the Batula residence at Taguig, Rizal. Azucena and her daughter Rhodora had just retired to the latter's room to view television and enjoy the evening together. Oscar Batula, Azucena's husband, and son Enrico went to their grocery store, an adjunct of their house, to attend to late customers. While there, Oscar noticed five persons enter the garage and cover their faces with handkerchiefs from the clothesline. Oscar and Enrico, who followed his father to the kitchen, were stunned when the men who turned out to be armed announced a holdup and ordered them together with their helpers Leony, Lito and Murillo, to lie face down on the floor. A sixth companion who posted himself outside stood beside Erlinda Taa who was buying sardines and poked his gun at her.

While three of the robbers guarded Oscar, Enrico and the helpers, the other two in the kitchen went up the second floor to look for the other occupants, barging into the room of Rhodora where she and her mother were. One of the malefactors then pointed his gun at Rhodora. The other felon, who was unmasked, inched closer to Azucena and ordered her at gunpoint to bring out money. She answered however that there was no money except the P100-bill on top of the drawer. He took the money and snatched Azucena's wristwatch causing her to faint. As he stood guard over the unconscious Azucena, his other companion in the room ordered Rhodora to go with him downstairs and show him where their daily sales were kept. He found P2,000.00 in cash and Rhodora's watch. Then he ordered her to return to her room while he reported his loot to his companions.

Irked by the meagerness of the loot, one of the intruders grabbed Oscar by the neck, lifted him from the floor and demanded that he bring out the rest of the money. But Oscar said they had no more money left. However, he offered instead their television and betamax which were the only appliances of value in the house. This however was not acceptable to the robber who then fired at Oscar hitting him on the right shoulder. Oscar managed to jump out of the window, after which, he heard two more shots coming from the kitchen. Meanwhile, as Rhodora was attending to her mother who by then was already regaining consciousness, their guard was called down by his companions.

Upon hearing the last two successive shots, Rhodora peeped from her bedroom and saw three of the robbers fleeing the house. She hurried downstairs and went out to the street. There she met her father wounded and shouting for help.

Soon enough Azucena recovered her composure and found herself alone in the room. She crept down the stairs to the kitchen and saw Enrico bleeding and slumped on top of some boxes. Both Enrico and Oscar were rushed to the Makati Medical Center but Enrico died in the emergency room due to hemorrhage.

None of the culprits responsible for the crime was immediately, apprehended. As the prospect of bringing justice to the Batulas dimmed with the lapse of time, a ray of hope appeared. In mid-February 1988, while Azucena was passing by the jeepney terminal in Bicutan, her attention was caught by the barker at the terminal. Azucena immediately recognized him as the unmasked robber who pointed a gun at her and snatched her wristwatch on that fateful night of December. Dazed, Azucena went on to shop for her grocery store which was to be reopened for the first time after the robbery, although her mind was on the barker at the Bicutan terminal.

When Azucena reached home, she told her husband about the barker. However, since it was a Saturday, the spouses were able to report the matter to the Criminal Investigation Service (CIS) in Camp Crame only the following Monday.

At the CIS, a team was formed to look into the report and Agent Rodolfo Polintan was assigned to lead the team. Accompanied by Azucena, the team proceeded to the Bicutan terminal. There they saw the accused Santiago Servillon and invited him to Camp Crame for questioning. Servillon was positively identified by Azucena and Rhodora in a police line-up as one of those who robbed them.

Accordingly, Santiago Servillon was formally charged in court, albeit erroneously, with Robbery with Homicide and Frustrated Homicide.[1]

The defense is alibi. Servillon testified that he was at Alejandro Olicia's house with fellow members of the Christian Gospel Fellowship during the period that the crime was supposedly perpetrated. He claimed he was there for their choral practice from five-thirty in the afternoon to ten o'clock in the evening.

The accused also questioned the credibility of Azucena and Rhodora. He contended that if Azucena really recognized him as one of those who robbed them, her natural reaction upon seeing him at the terminal would have been to go home immediately and report the matter to her husband or to the authorities and not blithely go about her shopping.

The trial court rejected the defense. On 16 February 1990, it found Santiago Servillon guilty of robbery with homicide and sentenced him to reclusion perpetua. The court also ordered him to pay the heirs of Enrico Batula P30,000.00 as civil indemnity, P20,000.00 as moral damages, P11,675.00 as actual damages for hospitalization, burial and other related expenses, and P3,100.00 as reparation for the stolen cash and wristwatches.[2] He is now before us on appeal.

It may be true that Azucena did not immediately go home to tell her husband that she saw the accused Servillon at the terminal. But her reaction upon seeing him was not altogether unnatural. While she may have been expected to rush to the police to report the matter so that Servillon could be apprehended at once, the fact that almost three months had already passed since the tragedy must also be considered. Quite naturally, Azucena was unprepared, even shocked, to see the accused whom she perhaps believed to have already gone into hiding, brazenly calling for passengers in broad daylight in a jeepney terminal. Thus, battling with the feeling of disbelief and the innate impulse to have the appellant apprehended at once, Azucena needed time to assimilate the consequences of unexpectedly finding him. After all, there was no reason to be apprehensive as her quarry was a barker at a public place, hence, could reasonably be expected to be in the same place again, as in fact he was, when Azucena returned with the CIS team.

Appellant insists that his identification by Rhodora cannot be relied upon. He argues that while Rhodora testified that he was one of the robbers, she stated in her affidavit before the CIS on 16 February 1988 that she did not see him at the time of the robbery but only at the office of the CIS.

In this regard, appellant appears to be suffering from a serious misapprehension of the facts. An examination of

the affidavit of Rhodora[3] fails to show that she ever made any statement to the effect that she did not see the accused during the robbery. She only said "x x x may pumanhik na dalawang armadong hindi nakikilalang lalaki sa itaas ng bahay x x x x"[4] The words "hindi nakikilala" do not mean that accused-appellant was not one of the robbers. A witness' statement that she does not know ("di ko kilala") the robbers does not imply that she cannot identify them; rather, it only means that she was not acquainted with, or did not know them, before the commission of the offense.[5] This is confirmed by Rhodora's later statement in the same affidavit - unfortunately not quoted by appellant - that although she did not know any of the robbers she would be able to recognize them if she saw them again.[6]

Appellant likewise considers quite suspect his identification by Azucena and Rhodora considering that Oscar testified that all the robbers were masked, that is, their faces were covered with handkerchiefs taken from the clothesline. Appellant also makes much of the fact that Leonardo Murillo, an alleged eyewitness, pointed to a certain Edgardo Galauran alias "Egay" as the unmasked robber in his affidavit taken by the police on 7 January 1988.[7]

These arguments do not help appellant's cause. Oscar did not state that all the robbers were masked. Rather, he said that five persons entered the garage, took the handkerchiefs from the clothesline and used them to cover their faces.[8] However, it was established by the evidence that six (6) persons perpetrated the robbery, not merely five (5). Hence, it was highly probable that the sixth robber whom Oscar did not see enter the garage was appellant Santiago Servillon who was after all clearly identified by Azucena and Rhodora. Leonardo Murillo's statement in his affidavit pointing to a certain "Egay" as the sixth robber, whose face was not covered, cannot adversely affect appellant's positive identification considering that Murillo was never presented in court to repeat his allegation, thus giving rise to the presumption that his testimony would be adverse if presented.[9]

As adverted to, the defense is alibi. However, while claiming to be at Olicia's house on the night of the robbery, Servillon completely failed to show that it was physically impossible for him to be at the Batulas' residence at the time the crime was perpetrated. It is elementary that for alibi to be believed, credible and tangible proof of physical impossibility for the accused to be at the scene of the crime is indispensable. In its absence, the defense of alibi cannot be sustained.[10]

In the instant case, the evidence proves the exact opposite of physical impossibility. Olicia's residence was just 200 meters away from that of the Batulas and could be reached by a mere fifteen-minute walk.[11] Olicia himself testified that the distance could be traversed in just three (3) minutes if a person was scared and ran fast.[12] This was established when Olicia's daughter, Erlinda Taa, who was buying sardines at the store at the time of the robbery, testified that she arrived at her father's house from the store in just two minutes by running.[13] Thus, even assuming that appellant was really at Olicia's house as early as five-thirty in the afternoon, in view of the proximity of the house of the Batulas to that of Olicia, he could have easily slipped away and returned after the robbery.

Cecilia Peñaranda and Alejandro Olicia corroborated appellant's story that he was practicing songs at Olicia's residence on the night in question. However, it is hard to believe that Cecilia and Alejandro had their eyes fixed on appellant all the time that he was there enough to vouch for his presence until ten o'clock in the evening when the fellowship ended. Besides, it was impossible for them to do so considering that more than twenty (20) members of the Christian Gospel Fellowship were also present.[14] Having failed to show that he could not have gone from where he was to the locus criminis at or about the time the crime was committed, his alibi cannot prosper.[15]

A word on the designation of the offense charged. The crime alleged in the Information is "robbery with homicide

and frustrated homicide." However, we agree with the court a quo that the crime committed was only robbery with homicide because the term "homicide" as used in Art. 294, par. (1), of the Revised Penal Code is meant in its generic sense, embracing not only the act which results in death but also all other acts producing anything short of death, and is, designated as such regardless of the number of homicides and physical injuries committed.[16] Hence, there is no such crime as "robbery with homicide and frustrated homicide." [17]

The penalty prescribed for robbery with homicide is reclusion perpetua to death.[18] With the aggravating circumstances of commission by a band[19] and dwelling,[20] the proper penalty imposable under the Revised Penal Code should have been death.[21] However, since the crime was committed on 5 December 1987 when the imposition of the death penalty was proscribed under the 1987 Constitution,[22] the trial court was correct in meting out only the penalty of reclusion perpetua. However, under present jurisprudence, the civil indemnity to be awarded to the heirs of the victim should be increased from P30,000.00 to P50,000.00.

WHEREFORE, the Decision appealed from declaring accused-appellant SANTIAGO SERVILLON Y FILISIS guilty beyond reasonable doubt of robbery with homicide, imposing upon him the penalty of reclusion perpetua and ordering him to pay the heirs of Enrico Batula P20,000.00 as moral damages, P11,675.00 as actual damages, and P3,100.00 as reparation for the cash and wristwatches is AFFIRMED with the sole modification that the civil indemnity is increased to P50,000.00.

Costs against accused-appellant.

SO ORDERED.

Davide, Jr., Quiason, and Kapunan, JJ., concur.

Cruz, (Chairman), J., on leave.

[1] The proper charge should be Robbery with Homicide as discussed herein; Original Records, pp. 1-2.

[2] Decision penned by Judge Martin S. Villarama, Jr., Regional Trial Court, Pasig, Br. 156, Original Records, pp. 401-410; Rollo, pp. 13-22.

[3] Original Records, pp. 49-50.

[4] Id., p. 49.

[5] *People v. Villareal*, Nos. L-36317-18, 31 January 1984, 127 SCRA 279, 285.

[6] Original Records, p. 50.

[7] Id., pp. 51-52.

[8] TSN, 28 April 1988, p. 5.

[9] x x x evidence willfully suppressed would be adverse if produced (Sec. 2, par. [e], Rule 131, Rules of Court).

[10] *People v. Angeles*, G. R. Nos. 104285-86, 21 May 1993, 222 SCRA 451, 463; *People v. Manero, Jr.*, G. R. Nos. 86883-85, 29 January 1993, 218 SCRA 85, 92; *People v. Pielago*, No. L-42256, 19 December 1985, 140 SCRA 418, 423-424; *People v. Catipon*, Nos. L--49264-66, 9 October 1985, 139 SCRA 192, 203; *People v. Pacis*, Nos. L-32957-8, 25 July 1984, 130 SCRA 540, 549; *People v. Sambangan*, No. L-44412, 25 November 1983, 125 SCRA 726, 731-732.

[11] TSN, 30 October 1989, p. 12.

[12] Ibid.

[13] TSN, 4 October 1989, p. 8.

[14] Id., p. 9.

[15] *People v. Repuela*, G. R. No. 85178, 15 March 1990, 183 SCRA 244, 251.

[16] *People v. Pamintuan*, G. R. No. 100771, 28 May 1993, 222 SCRA 716, 722; *People v. De Los Reyes*, No. L-44112, 22 October 1992, 215 SCRA 63, 77; *People v. Chanas*, G. R. No. 90802, 4 August 1992, 212 SCRA 65, 74; *People v. Dimaano*, G. R. No. 95231, 15 June 1992, 209 SCRA 819, 833; *People v. Penillos*, G. R. No. 65673, 30 January 1992, 205 SCRA 546, 564; *People v. Ponciano*, G. R. No. 86453, 5 December 1991, 204 SCRA 627, 637; *People v. Repuela*, G. R. No. 85178, 15 March 1990, 183 SCRA 244, 251; *People v. Cariño*, G. R. No. 73876, 26 September 1988, 165 SCRA 664, 673.

[17] *People v. Penillos*, G. R. No. 65673, 30 January 1992, 205 SCRA 546, 564; *People v. Ga*, No. L-49831, 27 June 1990, 186 SCRA 790, 805.

[18] Art. 294, par. (1), The Revised Penal Code.

[19] *People v. Damaso*, Nos. L-30116-7, 20 November 1978, 86 SCRA 370, 381; *People v. Salip Manla*, No. L-21688, 28 November 1969, 30 SCRA 389, 396-397.

[20] *People v. Gapasin*, G. R. No. 52017, 27 October 1986, 145 SCRA 178, 195; *People v. Lucero*, No. L-28811, 31 March 1980, 96 SCRA 694, 704.

[21] *People v. Cruz*, No. L-37173, 29 November 1984, 133 SCRA 426, 436.

[22] Now reimposed on certain heinous crimes under R.A. 7659 which took effect 1 January 1994.

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