

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ARMANDO VASQUEZ Y PARALES, RICARDO CORDOVA Y CONSUELO, RICARDO PAREDES Y BINGALA, CRIS CUENCA, EDDIE DOE @ SPUTNIK, ROGER DOE,...

G.R. No. 92658. April 30, 1991

Ponente: GRINO-AQUINO, J.

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GRINO-AQUINO, J.:

Armando Vasquez y Parales, Ricardo Cordova y Consuelo and Ricardo Paredes y Bingala were charged with the complex crime of Robbery with Homicide in Criminal Case No. 1008-89 of the Regional Trial Court, Branch 21 of Imus, Cavite, in the following information:

"That on or about the 16[th] day of September, 1988 in the Municipality of Kawit, Province of Cavite, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, while then armed with guns, by conspiring, confederating and mutually helping one another, with intent to gain, and by force and violence, did then and there willfully, unlawfully and feloniously enter the house of one LINO S.D. MALVAR and once inside, take, rob and carry away cash money, more or less P600,000.00, Philippine Currency, and pieces of jewelry worth more or less P300,000, Philippine Currency, belonging to said LINO MALVAR, and also carry away, more or less P3,000.00 in cash, Philippine Currency, three (3) wrist watches, four(4) rings and one (1) necklace, belonging to one PURIFICACION MALVAR, to the damage and prejudice of their respective owners.

"That on the occasion and by reason of the robbery, the above-named accused shot to death one ANGELITO MALVAR, to the damage and prejudice of the heirs of the latter.

"Aggravated by nighttime purposely sought to insure the commission of the crime and then committed by a band.

"Contrary to Law." (pp. 27-28, Rollo.)

On arraignment, Vasquez, Cordova and Paredes all pleaded not guilty to the charge. The other defendants have remained at large.

The case for the prosecution, based mainly on the testimonies of the sisters, Jacqueline and Susan Malvar, and their sixty-eight-year-old aunt, Purificacion Malvar, shows that:

At about 6:30 in the early evening of September 16, 1988, a group of men, numbering at least eight (8), entered the Malvar residence at 88 Balsahan Street, Binakayan, Kawit, Cavite. Susan was studying in a chair near the garage, Jacqueline was in the sala, while their aunt Purificacion was on the second floor. Three or four of the men approached Susan, and pointing a gun at her, shouted: "H'wag kang sisigaw, holdap ito!" (p. 3, Appellee's Brief.) Jacqueline, who was watching television in the sala, saw through the glass window, three or four persons walking in the driveway. She stood up, proceeded to the kitchen, and, looking through the screen door, asked the men what

they needed. The men pushed open the kitchen door and pointed a gun at Jacqueline, saying: "Do not shout, this is a hold-up!" (p. 8, Appellee's Brief.) At that instant, she heard her sister Susan exclaim: "Diyos Ko!" while she was being led by the armed men into the house. Jacqueline noticed that two other men stood guard outside the house. Both sisters were ordered to sit down in the sala. Jacqueline tried to turn off the television, but she was ordered not to turn it off. Instead, she was ordered to raise its volume.

The men cut the cords of the electric fan and telephone, and used them to tie the hands and feet of the girls. Cordova, Paredes and Vasquez then ran upstairs, kicked the door of the room where Purificacion was folding some clothes. Vasquez pointed a knife at her throat and ordered her not to make a sound. The men asked her to produce the keys to the house while they were tying her hands and feet with electric cord. When she could not give them any keys, she was closeted with her nieces inside a room upstairs. One man remained in the room to keep an eye on them. At the stairway, Purificacion saw five more men rush up, carrying short firearms. They ransacked the entire house, scattering things all over. About half an hour later, the door to the room was opened and they saw their brother, Angelito, with hands tied, being led upstairs by four men. They saw Paredes hit Angelito's head with the butt of his gun. Angelito fell kneeling down. The men ordered Angelito to produce the keys to the vault, but they heard him say that he did not know about the key they were asking for, whereupon another man hit him again on the head with a gun. They dragged him to the stairway and then heard their brother fall from the stairs with a thud. A few minutes later, they heard a gunshot, followed by four more.

After the marauders had left, the women were able to untie themselves eventually and they rushed downstairs. They found out from a neighbor that Angelito had been taken to the Cavite Medical Hospital. Susan rushed to the hospital but found him already dead from the gunshot wounds he had received.

The girls testified that the appellants and their companions robbed their residence for about one (1) hour and that they carted away cash, jewels and other valuables worth a million pesos, more or less.

They further testified that they recognized the appellants because the electrical connection to their house was not cut-off and all the lamps were brightly lit that night. Except for their guard, whose mouth was covered, all the others did not wear masks.

The other witnesses for the prosecution were Lino Malvar, the 56-year old father of the girls, and Pfc. Ramon Legaspi of the INP-Kawit, who conducted the custodial investigation and took the sworn statements of Vasquez and Cordova on September 23, 1988 at about 9:30 in the morning, in question-and-answer form, in the presence of Atty. Manolito Gumarang, a CLAO lawyer who was requested by the police authorities of Kawit to assist the accused.

The defenses of the accused were alibis and denials. Vasquez alleged that on the day of the robbery, he left his residence in Calamba, Laguna to draw his salary from a bank at Plaza Lawton, Manila, after which he attended mass in Baclaran Church and arrived home at 8 p.m. already. Cordova alleged that he stayed home that day. Paredes, a peanut-butter dealer, claimed that he had been out all day making deliveries in Quezon City. Afterwards, he visited his mother-in-law and watched television in her house until 9 p.m.

The accused disowned their written extra-judicial confessions as having been procured through third degree methods and without the assistance of counsel.

On October 6, 1989, the trial court rendered judgment, the dispositive portion of which reads:

"WHEREFORE, judgment is hereby rendered finding the accused guilty beyond reasonable doubt of the felony of robbery with homicide as defined and penalized under Art. 294 (1) of the Revised Penal Code. There being an aggravating circumstance of nighttime, each accused is hereby sentenced to undergo imprisonment

for the duration of reclusion perpetua and to pay, in solidum, the heirs of the deceased the amounts of (1) P30,000 as death indemnity, (2) P50,000 as moral damages, (3) P27,000 for funeral expenses, (4) P67,000 for the memorial park, (5) P3,592.25, (6) P31,673.90, (7) P11,673.90 as shown by Exhibits 'J-1,' 'J-2,' 'J-3' and 'J-4.'

"The accused are likewise ordered to pay jointly and severally the amount of P900,000.00 to Lino S.D. Malvar as restitution for the articles and cash taken during the robbery.

"The accused are also ordered to pay proportionately the costs of this suit." (p. 57, Rollo.)

In this appeal before us, the appellants seek a reversal of their conviction, alleging that the court a quo erred:

1. in convicting them on the basis of their extrajudicial confessions allegedly obtained through force and duress;
2. in finding that they were positively identified by the prosecution witnesses contrary to the evidence on record; and
3. in convicting them of the crime charged despite the absence of direct proof as to who was actually responsible for the killing of the victim, Angelito Malvar, and the absence of clear and convincing evidence of the existence of a conspiracy among the perpetrators.

The appeal is devoid of merit.

It is true that the rule is that no in-custody investigation shall be conducted unless it be in the presence of counsel engaged by the person arrested, by any person in his behalf or appointed by the court upon petition either of the detainee himself or by someone in his behalf (*People vs. Albofera, et al.*, 152 SCRA 123). The ban on un-counselled confession continues with more force under the 1987 Constitution (*People vs. Rey Manlapaz*, 183 SCRA 300). However, the trial court made it emphatically clear that the conviction of the accused was not based on their extrajudicial confessions, for there was more than enough other evidence proving their guilt beyond reasonable doubt (p. 5, RTC Decision; p. 31, Rollo.)

The appellants were positively identified by the prosecution witnesses, Susan, Jacqueline and Purificacion Malvar, not only in a police line-up at the Kawit Police Station, but also in their sworn statements, and, finally during the trial (pp. 4-10, tsn, Feb. 8, 1989; pp. 27-30, 32-33 and 46-50, tsn, Feb. 14, 1989) as the perpetrators of the heinous crime.

Appellants' alibis were uncorroborated, hence, unconvincing. Only Vasquez was corroborated by his wife who testified that she accompanied him to withdraw money from a bank in Manila on the day of the robbery with homicide. On direct examination, she testified on the exact hour when she and her husband left one place and proceeded to another, but her clockwork precision failed on cross-examination. She even forgot how much money she and her husband supposedly withdrew from the bank.

It is a settled doctrine in criminal law that the defense of alibi may not prevail against the positive identification of the accused made by prosecution witnesses. (*People vs. Cabale, et al.*, 185 SCRA 140; *People vs. Genaro Tamayo*, 183 SCRA 375; *People vs. Ernesto Santos*, 183 SCRA 25; *People vs. Melchor Simene*, 184 SCRA 99.)

For an alibi to prosper, the accused must prove not only that they were somewhere else when the crime was committed, but also, that it was impossible for them to be at the scene of the crime at the time it was committed (*People vs. Carmina*, 185 SCRA 140).

The appellants assail the trial court's finding that a conspiracy existed among them. A conspiracy may be inferred from the acts of the accused tending to show community of design or purpose. Conspiracy having been adequately

proven, all the conspirators are liable as co-principals, regardless of the extent and character of their participation, because the act of one is the act of all (People vs. Dela Cruz, 183 SCRA 763). The degree of actual participation of each in the commission of the crime is immaterial in a conspiracy (People vs. Cantuba, 183 SCRA 289).

WHEREFORE, the appealed decision is affirmed in all respects except the award to the heirs of the deceased, Angelito Malvar, of P30,000 as indemnity for his death, which is hereby increased to P50,000 in accordance with our En Banc Resolution of August 30, 1990, and applied in subsequent cases. Costs against the appellants.

SO ORDERED.

Narvasa, (Chairman), Cruz, Gancayco, and Medialdea, JJ., concur.

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