

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. TIRSO GARCIA AND VICENTE TORREJAS, ACCUSED. VICENTE TORREJAS, APPELLANT.

G.R. No. 94187. November 04, 1992

Ponente: DAVIDE, JR., J.

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DAVIDE, JR., J.:

Appellant Vicente Torrejas appeals from the decision, promulgated on 20 April 1990, of Branch 4 of the Regional Trial Court (RTC) of Bohol in Criminal Case No. 5696 the dispositive portion of which provides:

"WHEREFORE, the Court finds that accused Vicente Torrejas is GUILTY beyond doubt (sic) of the crime charged for which he is hereby sentenced to life imprisonment and to pay the costs. He is also ordered to pay the heirs of Flaviano Gonzales legal indemnity of P30,000.00 as well as reimbursement of (sic) the stolen articles in the sum of P5,600.00.

SO ORDERED."[1]

Together with Tirso Garcia, appellant was charged with the crime of robbery with homicide in an information which reads:

"The undersigned, Third Assistant Provincial Fiscal, hereby accuses Tirso Garcia alias Mamerto, Meming, Ranny and Vicente Torrejas both of Kinan-oan, Trinidad, province of Bohol, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, (sic) conspiring, confederating and mutually helping with each other, with intent to gain and by the use of violence or intimidation upon persons did then and there willfully, unlawfully and feloniously enter the inhabited house of Flaviano Gonzales and once inside the said house, did then and there willfully, unlawfully and feloniously take, steal and carry away therefrom against the consent of the owner thereof, money in cash in the amount of Five Thousand Six Hundred Pesos (P5,600.00) Philippine Currency, and assorted family documents on real properties belonging to and owned by the said Flaviano Gonzales, and by reason or on occasion of the said robbery the accused conspiring, confederating and mutually helping with each other, with intent to kill and without justifiable cause, did then and there willfully, unlawfully and feloniously assault attack and hit the victim Flaviano Gonzales with the use of blunt instruments thereby inflicting physical injuries or mortal wounds on the said victim which resulted to his immediate death to the damage and prejudice of the heirs of the deceased in an amount to be proved during the trial of the case.

Acts committed contrary to the provisions of Article 293 and 294 of the Revised Penal Code in relation to Art. 48 of the same Code, with the aggravating circumstances of abuse of superior strength (sic) and disregard of the respect due the offended party on account of his age, the latter being already 78 years old at the time of the incident."[2]

Accused Tirso Garcia disappeared after the incident and remains at large.

Only appellant was arraigned; because of his plea of not guilty, trial on the merits ensued. The version of the

prosecution, as testified to by witnesses Socorro Gonzales, Eusebio Nagulada and Dr. Dalmacio Javellana, is summarized by the People in its Appellee's Brief as follows:[3]

"In the early morning of June 30, 1988, Socorro Gonzales left her house at Kinan-oan, Trinidad, Bohol and proceeded to the market of Trinidad to sell tobacco, as it was her town's market day (pp. 2-3, tsn, June 14, 1989). Her 79-year-old husband Flaviano Gonzales, also known as 'Falab,' who was then not suffering from any serious illness, just stayed at their home (ibid).

Later that same morning, Eusebio Nagulada called at Flaviano's house at Kinan-oan, Trinidad, Bohol to ask him the amount of P40.00 as payment for services he rendered as errand boy and all-around helper of Flaviano and his wife, which amount he intended to spend on the market (pp. 2-5, tsn, June 13, 1989). Flaviano, however, handed to him the amount of P100.00 (ibid.). Subsequently, Nagulada left Flaviano and proceeded to the market at Trinidad, Bohol. After he had purchased what he needed, he gave the P60.00 change of Flaviano to the latter's wife, Socorro, who was also at the market. Socorro, instead, returned to him the amount of P26.00 and requested Nagulada to buy rice, battery (sic), fish and sugar for delivery to her husband (pp. 6-8, tsn, June 13, 1989). Nagulada complied and upon completing his errand proceeded to the house of Flaviano to deliver the articles purchased (pp. 7-8, tsn, June 13, 1989). When he arrived there at past 2:00 o'clock P.M., he saw Tirso Garcia and appellant Vicente Torrejas standing near the banana plants outside Flaviano's house (pp. 8--9, tsn, June 13, 1992). Consequently, he greeted them. As neither of the two answered him, he proceeded to call at the main door of Flaviano's house but nobody answered so he just entered through the door, which was not locked. Afterwards, he went to the kitchen and placed the articles he purchased on top of an aparador (pp. 10-11, tsn, June 13, 1989). As he turned to go out, he saw the dead body of Flaviano with his head partly hidden under the stove where the fuel was placed (pp. 10-12, tsn, June 13, 1989). Shocked at this discovery, he rushed outside but Tirso Garcia and appellant, who were still standing near the banana plants, saw him (pp. 11-12, tsn, June 13, 1989). Subsequently, Tirso Garcia summoned him and told him not to tell anybody about Flaviano's death or else, he would be the next victim. At that time, appellant just stood looking at Nagulada and Garcia as they were conversing about three (3) fathoms away (pp. 12-14, 15-16, tsn, June 13, 1989).

Consequently, Nagulada, who felt scared of Garcia's threat, retraced his steps, left the premises and proceeded to his house about 200 meters away (pp. 14-15, tsn, June 13, 1989). He did not tell anyone, except his wife Basilia, that Flaviano is (was) already dead (ibid).

Meanwhile, Socorro Gonzales left her stall at the market in Trinidad, Bohol and just walked towards her home at about 3:30 P.M. (pp. 4-5, tsn, June 14, 1989). At about 4:00 o'clock P.M., she called at the main door of her house, but no one answered her (ibid). Consequently, she went through the kitchen door and thereupon found her husband, Flaviano, lying under the stove with his head covered by a coconut husk. Forthwith, she set down the things she brought with her and knelt down to massage her husband's chest and stomach. Afterwards, she removed the coconut husk from his face and there and then discovered that his ears had been smashed (pp. 4-13, tsn, June 14, 1989). Consequently, she rushed outside shouting for help from her neighbors. Subsequently, she saw Tibo Apao, a nine-year old boy, and requested him to go to the store to inquire if persons there may have witnessed what had happened to her husband. (ibid).

Immediately thereafter, she returned to her husband's side and, in the process, discovered that he had many wounds (pp. 5-6, tsn, June 14, 1989; Exhs. "B", "B-1"). Near her husband's dead body lay a pestle, his cane which was already broken, a 'buri' hat and a 'chako' (Exhs. "B", "D", "E", "F" and "G"). Close examination thereof disclosed that the lower end of the pestle, as well as of the chako, showed fresh blood stains. Socorro recognized the 'buri' hat as the one used by Tirso Garcia when he passed by their house two (2) days before the incident, while the 'chako' was the same one owned by Tirso Garcia's younger brother, Edilberto Garcia, which she had previously seen Edilberto use before the incident (pp. 7-8, tsn, June 14, 1989). Socorro likewise discovered that their ceiling had been opened. She did not see any revolver therein although her husband had previously informed her that he kept there the .38 caliber revolver pledged to him by Tirso Garcia as collateral for the P300.00 he (Flaviano) loaned to him (pp. 9-10, tsn, June 14, 1989). Furthermore, she saw that their two

(2) wooden trunks appeared to have been forcibly opened and land titles and cash of about P5,000.00 out of their recent sales of coconuts, 'palay,' and cassavas (sic) kept therein were already missing (pp. 9-13, tsn, June 14, 1989).

Subsequently, Dr. Dalmacio Javellana, Municipal Health Officer of Trinidad, Bohol, upon request of the INP Station Commander of Trinidad, Bohol, who was notified of the killing, conducted post-mortem (sic) examination on Flaviano's body at about 7:30 o'clock in the evening of June 30, 1988 (pp. 2-3, tsn, May 26, 1989; Exh. "A"; p. 5, rec.). Dr. Javellana placed the time of the victim's death between 2:00 to 3:00 o'clock in the afternoon, or five hours before the post-mortem examination. His findings indicated (sic) as follows:

'A male individual in cadaveric spasm showing severe contusion of the right ear with concomittant (sic) fracture of the parietal bone with blood coming out from the ears (,) nose and mouth, hands raised and flexed with semi-clinched (sic) fist (,) with laceration of the skin at the postero-distal part of the right arm "2" x 4, contusion of the left and right supra orbital regions.'

(Exh. A, p. 5, rec.)

Thereafter, Dr. Javellana issued a Medico-Legal Post-Mortem Report which stated the cause of the victim's death as follows:

'Cause of death: Cerebro-Vascular Accident Secondary to Cerebro Hemorrhage; Skull Fracture; Cerebral Concussion.'

(Ibid); pp. 2-6, tsn, May 26, 1989; Exhs. "B", "B").

As a result of Flaviano's death, Socorro incurred expenses for his funeral.

On July 11, 1988, Nagulada gave his statement before the police station at Trinidad, Bohol regarding the incident which, among others, declared that he saw Tirso Garcia and appellant outside the house of the deceased Flaviano at about 2:00 o'clock in the afternoon of June 30, 1988 and that Garcia warned him that if he would tell anybody about the death of Flaviano, he will be the next person to be killed, while appellant merely looked at them some three (3) fathoms away (Exh. "C"; pp. 8-14, 15-16, 21-22, June 13, 1989)."

The appellant's version, on the other hand, as summarized by the People in its Brief, is based on the testimonies of the appellant himself and his witnesses, namely Roberto Infuesto, Pedro Daclan and Francisco Gonzales:[4]

"Appellant is a resident of Tugas, Jetafe, Bohol. On June 11, 1988, he brought his sick father to the house of his brother-in-law Pedro Daclan at Kinan-oan, Trinidad, Bohol. On the same occasion, he met Roberto Infuesto, his former co-worker at the logging company of one Quirino Gonzales (pp. 2-4, tsn, June 19, 1989; pp. 2-3, tsn, June 15, 1989). In the early morning of June 30, 1988, he (appellant) and Allan Daclan went to select good cassavas (sic) of Pedro Daclan at Sitio Katipunan, Trinidad, Bohol, one kilometer away from Pedro Daclan's house, which were (sic) intended for delivery to Philstarch. They finished the task at past 1:00 o'clock in the afternoon. Afterwards, he and Allan went to Daclan's house. His brother-in-law later commanded him to get a sack of corn grits and a sack of fertilizer from the store of Nena Daclan and load it on the cart. Accordingly, he went to the store and did as he was told. Upon reaching the store, appellant took the sacks of corn grits and fertilizer and loaded them on the cart. On his way to Daclan's house, he saw Infuesto plowing his field. He arrived at Daclan's house at past 2:00 o'clock and saw Daclan talking to Francisco Gonzales, who has (sic) just arrived. When Gonzales saw appellant, he attempted to borrow money from the latter but he told him that he has mortgaged his property. Francisco Gonzales chatted with them until past 3:00 o'clock when he returned to the poblacion (pp. 2-4, tsn, June 15, 1988; pp. 2-4, tsn, June 19, 1989). At around 4:00 o'clock in the afternoon, appellant, his wife, and Daclan heard shouts apparently coming from the house of Flaviano Gonzales, which prompted Daclan to investigate. Daclan came back at past six in the afternoon and informed appellant and his companions that Flaviano had died in his house (p. 5, tsn, June 15, 1989; pp. 2-4, tsn, June

19, 1989).

During the trial, appellant testified that he has (sic) never met Nagulada prior to his (appellant's) imprisonment at the municipal jail of Trinidad, Bohol, (pp. 6-8, 13, tsn, June 15, 1989)."

We find the foregoing summary to be amply supported by the evidence adduced by the parties.

The conviction of the appellant is based solely on the trial court's observations that (a) there existed no previous misunderstanding between him and the prosecution witness Eusebio Nagulada; it is the latter who testified having seen the appellant and Tirso Garcia together a few meters from the house of the victim at past 2:00 o'clock in the afternoon of the day of the incident; (b) the appellant left for Jetafe, Bohol on the day after the incident; (c) the appellant lied when he claimed that he did not know the victim; and (d) at the time the victim was killed, the appellant was, as he had testified, in the house of his brother-in-law, Pedro Daclan, a mere 100 meters from the house of the victim; it was, therefore, not physically impossible for the appellant to be at the crime scene when the crime was committed.

In his Brief,[5] appellant submits the following assignment of errors:

"I

THE TRIAL COURT ERRED IN CONVICTING ACCUSED-APPELLANT VICENTE TORREJAS BASED SOLELY ON CIRCUMSTANTIAL EVIDENCE.

II

THE TRIAL COURT ERRED IN FINDING VICENTE TORREJAS GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF ROBBERY WITH HOMICIDE."

Appellant contends that he was convicted on the basis of a single circumstance which does not even clearly implicate him, namely his having been seen, by witness Nagulada, with co-accused Tirso Garcia at past 2:00 o'clock in the afternoon of the day of the killing near the house of the victim, Flaviano Gonzales. There was no eyewitness to the crime. Otherwise stated, appellant avers that the circumstantial evidence presented did not prove his guilt beyond reasonable doubt.

In a gesture of utmost objectivity and fairness, which is but proper and to be expected of it under all circumstances, the Office of the Solicitor General, in the Brief for the Appellee,[6] concurs with the appellant and recommends the reversal of the appealed decision and acquittal of the appellant.[7] In support thereof, it contends that the only circumstance that can be appreciated against appellant is the statement of prosecution witness Eusebio Nagulada that he saw Tirso Garcia and the appellant standing near the banana plants about five (5) and fifteen (15) meters away, respectively, from the house of Flaviano minutes before he (Nagulada) discovered that the latter had been killed; the appellant remained in the same place and watched as Garcia warned him (Nagulada) not to tell anyone that Flaviano was dead or else he would be the next victim.

The Solicitor General opines that appellant should be convicted only if it could be proven that he had conspired with his co-accused Tirso Garcia. In view of the rule obtaining in this jurisdiction that conspiracy must be established by positive and conclusive evidence, appellant's mere presence at the place of the incident, absent any other corroborating circumstance, cannot be considered as sufficient to establish his having conspired with Tirso Garcia to kill and rob Flaviano.[8]

We find merit in the appeal and do not hesitate to acquit the accused for the sheer failure of the prosecution to present evidence that would establish guilt beyond reasonable doubt. We note at the same time, to Our dismay,

the failure of the trial court to accord with profound reverence the solemn mandate of the Constitution that an accused is presumed innocent until the contrary is proven and to remain faithful to the firmly settled doctrine that in order to overcome said presumption, nothing but proof beyond reasonable doubt must be established by the prosecution. Save in certain circumstances, as where the accused admits the commission of the imputed criminal act but interposes justifying circumstances, that burden is never shifted to the accused or diminished by the weakness of the defense. For indeed, unless the prosecution discharges that burden, the accused need not even offer evidence in his behalf. He would be entitled to an acquittal. As We stated in *People vs. Dramayo*:^[9]

"Accusation is not, according to the fundamental law, synonymous with guilt. It is incumbent on the prosecution to demonstrate that culpability lies. Appellants were not even called upon then to offer evidence on their behalf. Their freedom is forfeit (sic) only if the requisite quantum of proof necessary for conviction be in existence. Their guilt must be shown beyond reasonable doubt. To such a standard, this Court has always been committed. There is need, therefore, for the most careful scrutiny of the testimony of the state, both oral and documentary, independently of whatever defense is offered by the accused. Only if the judge below and the appellate tribunal could arrive at a conclusion that the crime had been committed precisely by the person on trial under such an exacting test should the sentence be one of conviction. It is thus required that every circumstance favoring his innocence be duly taken into account. The proof against him must survive the test of reason; the strongest suspicion must not be permitted to sway judgment. The conscience must be satisfied that on the defendant could be laid the responsibility for the offense charged; that not only did he perpetrate the act but that it amounted to a crime. What is required then is moral certainty."

We have this dictum not only because the accused "faces the full panoply of state authority with all 'The People of the Philippines' arrayed against him," hence the need "to equalize the positions of the prosecution and the defense by presuming the innocence of the accused until the state is able to refute the presumption by proof of guilt beyond reasonable doubt,"^[10] but also for the cogent reasons that "[t]he accused during a criminal prosecution has at stake interests of immense importance, both because of the possibility that he may lose his liberty upon conviction and because of the certainty that he would be stigmatized by the conviction. Accordingly, a society that values the good name and freedom of every individual should not condemn a man for commission of a crime when there is reasonable doubt about his guilt. x x x Moreover, use of the reasonable doubt standard is indispensable to command the respect and confidence of the community in applications of the criminal law. It is critical that the moral force of the criminal law not be diluted by a standard of proof that leaves people in doubt whether innocent men are being condemned. It is also important in our free society that every individual going about his ordinary affairs have confidence that his government cannot adjudge him guilty of a criminal offense without convincing a proper factfinder of his guilt with utmost certainty."^[11]

This reasonable doubt standard has constitutional stature for the Due Process Clause protects the accused against conviction except upon proof beyond reasonable doubt of every fact necessary to constitute the crime with which he is charged.^[12]

Absolute certainty as to the guilt of the accused is, of course, not required.^[13] Only moral certainty, or that degree of proof which produces conviction in an unprejudiced mind, is needed.^[14]

In the instant case, nobody witnessed the taking of the property subject of the robbery and the killing of the victim. There is no evidence to show that either or both deeds took place inside the house, specifically in the kitchen where the victim's dead body was discovered. The only circumstance that could possibly link the appellant to the incident is his alleged presence near the victim's house at the time of the commission of the crime. Conceding, *ex gratia*, such presence to have been adequately proven -- although such averment was vigorously denied by appellant -- thereby effectively according full faith and credit to the testimony of prosecution witness Eusebio Nagulada, such testimony provides a single circumstance only. In order that circumstantial evidence may

sustain a conviction, there must exist, inter alia, more than one circumstance. Section 4, Rule 133 of the Rules of Court provides:

“SEC. 4. Circumstantial evidence, when sufficient. -- Circumstantial evidence is sufficient for conviction if:

- (a) There is more than one circumstance;
- (b) The facts from which the inferences are derived are proven; and
- (c) The combination of all the circumstances is such as to produce a conviction beyond reasonable doubt.”

The lone allegation that appellant was standing near the victim's house minutes after the offense was committed, unsupported by any other credible or competent evidence, can not even engender a belief that he committed a crime. At most, one would merely suspect. Suspicion is not proof. Of course, as correctly observed by the Office of the Solicitor General, it would have been entirely different if conspiracy between the appellant and Tirso Garcia was established. The rule is well settled that the same degree of proof is required to support a finding of the presence of conspiracy, that is, it must be shown to exist as clearly and as convincingly as the commission of the offense itself.[15] Direct proof, however, is not essential; it may be shown by acts and circumstances from which may logically be inferred the existence of a common design among the accused to commit the offense charged.[16] In the instant case, the prosecution miserably failed to show other facts and circumstances, except the appellant's supposed presence near the house of the victim, from which it may be reasonably and logically inferred that both appellant and Tirso Garcia had agreed to rob and kill the victim and actually decided to commit it. Mere passive presence at the scene of the crime does not make a person liable therefor.[17]

We note the trial court's attempt to supply the missing piece, so to speak, to the prosecution's evidence by taking into account the appellant's departure on the day after the incident and the weakness of his defense of alibi. As to the first, the court relied on the rule that flight is indicative of guilt. Indeed, as written in the literature of the Old Testament, “the wicked man flees though no one pursues, but the righteous is as bold as the lion.”[18] Unfortunately, however, no such flight could be ascribed to the appellant. The trial court lost sight of the fact that the appellant was then a resident of Tugas, Jetafe, Bohol and that he happened to be in Kinan-oan, Trinidad, Bohol on 11 June 1988 because he brought his sick father to the house of his brother-in-law, Pedro Daclan. Flight, in order to be considered as an indication of guilt, presupposes that a person escapes from the authorities to evade prosecution. It does not contemplate a situation where the accused, like the appellant in the case at bar, returns to his home where at any time, he may be picked up for questioning in connection with or arrested for having committed a crime. If there is anyone upon whom flight can be appreciated against, it is Tirso Garcia who remains at large.

As to alibi, the trial court should have disregarded the same altogether because reliance on it is entirely unnecessary. The prosecution having miserably failed to prove appellant's guilt beyond reasonable doubt, the weakness of his defense should not have been even made to come into the picture. The weakness of his alibi could not strengthen the prosecution's case, for settled is the rule that the prosecution must rely on the strength of its evidence and not on the weakness of the defense.

No court, when confronted with issues that affect the life and liberty of citizens in a free society, should treat flippantly the latter's constitutional guarantees and supply deficiencies in the evidence for the prosecution with its own bias, suspicion or speculation.

All told, Our minds cannot rest easy upon the certainty of guilt on the part of the appellant on the basis of the scant and unreliable evidence presented by the prosecution.

One final word. The trial court imposed the penalty of life imprisonment on the appellant. Under the first

paragraph of Article 294 of the Revised Penal Code, the penalty for robbery with homicide is reclusion perpetua to death. In view of the first paragraph of Section 19, Article III of the 1987 Constitution, only reclusion perpetua may be imposed. This penalty is not the same as life imprisonment. We have reiterated this time and again^[19] and admonished judges to employ the proper legal terminology in the imposition of imprisonment penalties because of their different accompanying legal accessories and effects. Failure to heed this pronouncement can no longer be excused.

WHEREFORE, for lack of proof beyond reasonable doubt, the appealed decision of Branch 4 of the Regional Trial Court of Bohol in Criminal Case No. 5696 is REVERSED and appellant VICENTE TORREJAS is hereby ACQUITTED. His immediate release from detention is hereby ordered, unless he is being held for another lawful cause.

Costs de officio.

SO ORDERED.

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

[1] Rollo, 20-24. Per Judge Fernando S. Ruiz.

[2] Rollo, 7-8.

[3] Rollo, 93-99.

[4] Rollo, 100.

[5] Rollo, 54, et. seq.

[6] Id., 90-110.

[7] Id., 110.

[8] Rollo, 104-106.

[9] 42 SCRA 59, 64 [1971]; see also *People vs. Zamora*, 54 SCRA 47 [1973].

[10] *People vs. Tempongko*, 144 SCRA 583 [1986].

[11] *In Re Winship*, 397 U.S. 358, 90 S. Ct. 1068, 25 L.E. 2d 368, excerpted from LEWIS and PEOPLES, *The Supreme Court and the Criminal Process*, 1978 ed., 712.

[12] Id.

[13] *U.S. vs. Reyes*, 3 Phil. 3 [1903]; *U.S. vs. Lasada*, 18 Phil. 90 [1910]; *People vs. Lavarias*, 23 SCRA 1301 [1968]; *People vs. Malilay*, 63 SCRA 420 [1975].

[14] Section 2, Rule 133, Rules of Court.

[15] *People vs. Custodio*, 47 SCRA 289 [1972]; *People vs. Llamera*, 51 SCRA 48 [1973]; *People vs. Tumulip*, 60 SCRA, 303 [1974].

[16] *People vs. Tingson*, 47 SCRA 243 [1972].

[17] *People vs. Regal*, 5 SCRA 703 [1962]; *People vs. Custodio*, *supra*.

[18] Proverbs, 28:1; 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.

[19] See for instance, People vs. Mobe, 81 Phil. 58 [1948]; People vs. Abletes, 58 SCRA 241 [1974]; People vs. Gonzales, 58 SCRA 266 [1974]; People vs. Pilonos, 84 SCRA 167 [1978]; People vs. Baguio, 196 SCRA 459 [1991]; People vs. Penillos, 205 SCRA 546 [1992].

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