

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
NORBERTO VILLAGRACIA, ELMER PAGLINAWAN, ALFONSO
PASTORAL, NELSON LEDESMA, WILFREDO MANZA, NIXON
LEDESMA, JOHN DOE, PETER D...**

G.R. No. 94471. March 01, 1993

Ponente: MELO, J.

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MELO, J.:

Accused-appellants seek the reversal of the April 17, 1990 decision of the Honorable Enrico A. Lanzas, Presiding Judge of Branch 63 of the Regional Trial Court, Fourth Judicial Region, stationed at Calauag, Quezon, sentencing each of them to reclusion perpetua with the accessory penalties provided for by law for committing robbery with frustrated homicide and "... to jointly and severally reimburse the offended party in the amount of P10,195.00 for the stolen properties, the sum of P8,000.00 as and for medical expenses of Alejo Flavier plus the costs of the suit. It appearing however that during the pendency of this case, accused ELMER PAGLINAWAN escaped from confinement but was subsequently killed in Calamba, Laguna, the case against him is therefore DISMISSED." (pp. 34-35, Rollo).

The prosecution's evidence shows that at around eight o'clock in the evening of September 30, 1987 at Barangay Tan-ag, Lopez, Quezon, the spouses Alejo and Lourdes Flavier, their daughter-in-law Regulita Flavier, and other close relatives were at the second floor of their house watching television when somebody knocked at the door of their store located at the ground floor, desiring to buy cigarettes. Lourdes Flavier stood up and attended to these customers who introduced themselves as members of the New People's Army and that they wanted to talk to her husband, Alejo. Upon being so informed, Alejo came down the stairs to meet the strangers who asked for food. As Alejo went up the stairs to ask Lourdes to prepare food, four of the strangers followed Alejo and upon reaching the second floor, the intruders, now all armed, told the Flaviers that they needed money. Alejo and Lourdes assured them that they will be given money but requested that they be spared from harm. Despite this assurance, the four armed men pointed their weapons at the occupants of the house. Nelson Ledesma poked a gun at Alejo Flavier, while Norberto Villagracia pointed his gun at Regulita Flavier. Alfonso Pastoral and Elmer Paglinawan had their balisong on the ready, threatening Lourdes Flavier. Alejo raised both hands and told the band that they would be given money but pleaded not to be harmed. Nelson took a knife and, instead of heeding Alejo's plea, stabbed the latter at the back. Lourdes was able to escape towards her sister's house while Alejo was able to follow his wife to the same house. Norberto Villagracia pointed his gun at Regulita while Wilfredo Gampa was pointing his balisong. Nixon Ledesma, earlier left outside, later followed the group to the house of the victims.

When Regulita Flavier was left behind, the six robbers demanded money and jewelry and obtained P2,500.00 cash, rings, aras, necklaces and a radio cassette which Nelson Ledesma carted away. In addition, the robbers took cans of assorted sardines, cigarettes and other merchandise totalling P10,195.00. They grabbed Regulita and brought her to the barangay hall from where she later escaped.

Alejo Flavier was brought to the hospital where he was operated on, staying thereat for nine days, and the doctor confirmed that the stab wounds sustained by Alejo could have produced his death were it not for the timely medical operation performed on him.

When they were apprehended and brought to the police station in Lopez, Quezon, all six accused-appellants were identified by the victims, Alejo Flavier, Lourdes Flavier, and Regulita Flavier, as the malefactors.

In resisting the charge, accused-appellants relied on denial and alibi. They averred that they were maltreated and forced to execute extrajudicial confessions without legal counsel. Although the confessions were subscribed and sworn to before Judge Rodolfo V. Garduque and the affiants were assisted by Atty. Aurora Maqueda Roman, the trial court did not consider the same (p. 10, Decision; p. 31, Rollo).

From the evidence before it, the court was convinced that the six robbers, two armed with short firearms and two with knives, robbed the house of spouses Alejo Flavier and Lourdes Flavier of valuables and goods worth P10,195.00. The trial court observed that the robbers concerted, conspired, and confederated in realizing their goal. The court also found that all are accountable for the stabbing of Alejo because the rest of the robbers did not stop Nelson Ledesma from inflicting the almost fatal wounds. The trial court also noted the positive identification made by the victims of all accused-appellants who wore no masks when they accomplished the crime at a place which was well lighted.

Accused-appellants, in seeking reversal, would fault the trial court for allegedly erring in:

- "1. ... appreciating the evidence for the prosecution which failed to prove guilt of the accused for robbery with frustrated homicide.
2. ... finding accused-appellants guilty beyond reasonable doubt of the crime charged." (pp. 9-10, Appellants' Brief; following p. 47, Rollo.)

According to accused-appellants, the witnesses for the prosecution were far from consistent in their testimony. Accused-appellants point to Regulita Flavier having testified that Alejo Flavier was stabbed by Nelson Ledesma while Alejo averred that Nelson Ledesma only poked a gun on him and that he does not know who actually stabbed him twice at the back; that Regulita said that only four persons were involved in the robbery but she later declared that four persons accompanied her father-in-law to the second storey of the house while two of the robbers stayed at the ground floor where the store is, guarding the house (p. 10, Appellants' Brief; p. 47, Rollo). On the basis of these so-called inconsistencies, accused-appellants insist that the narration from the People's witnesses can not warrant conviction for the crime levelled against accused-appellants.

Moreover, accused-appellants contend that the three prosecution witnesses did not testify from their first hand knowledge of the facts sought to be established by the prosecution since the identification of accused-appellants was merely anchored on their confessions which were executed under duress. Thus, accused-appellants conclude that the vacillating testimony of the People's witnesses and the flaw in taking their confessions entitle them to acquittal.

A study of the record reveals that the State was able to overcome the constitutional presumption of innocence by the required proof beyond reasonable doubt. The factum probandum was established by the three eyewitnesses who positively pointed to accused-appellants as the perpetrators of the crime (p. 53, Rollo; pp. 19-20, Appellee's Brief).

Since the testimony of the three prosecution witnesses is supported by affirmative evidence, accused-appellants' exculpation premised on denial and alibi must inevitably crumble (TSN, Jan. 10, 1990, p. 5; TSN, July 19, 1988, p. 4). Alibi is a weak defense especially if contradicted by an eyewitness' testimony (People v. Escamillas, 208

SCRA 441 [1992]; *People v. Francisco*, 182 SCRA 305 [1990]). Norberto Villagrancia, Alfonso Pastoral and Nelson and Nixon Ledesma claimed that they were elsewhere in Lopez, Quezon, but they failed to prove that it was physically impossible for them to have been at the scene of the crime when the robo was committed. In alibi, this must be clearly shown (*People v. Solis*, 182 SCRA 182 [1990]; *People v. Cruz*, 208 SCRA 326 [1992]).

Moreover, the version of the three prosecution eyewitnesses on the attempt on the life of Alejo was reinforced by the findings and testimony of Dr. Teodoro Serrano, the attending physician, who confirmed that the stab wounds could have produced death (p. 53, Rollo; p. 21, Appellee's Brief).

On the other hand, accused-appellants were unable to prove any ulterior motive on the part of the prosecution witnesses to falsely implicate them for the crime. In the absence of ill-will, it is hardly credible that these witnesses would prevaricate and cause damnation to one who brought them no harm or injury (*Galan v. Napase*, 208 SCRA 1 [1992]; *People v. Mendoza*, 121 SCRA 149 [1983]).

Accused-appellants also claim that Regulita Flavier's statement that her father-in-law was stabbed by Nelson Ledesma is in direct conflict with the statement of Alejo that he does not know who stabbed him. A contrario, the fact that Alejo declared that accused-appellant Nelson Ledesma poked a short firearm at his stomach could not have discounted the possibility that Nelson had managed to draw a knife with the other hand and then stab Alejo while reaching out to get the money demanded by the appellants. Withal, in conspiracy, a showing as to who inflicted the fatal blow or wound is not required to sustain a conviction (*People v. Salcedo*, 172 SCRA 78 [1989]) inasmuch as the guilt or culpability is imputable to all in equal degree (*People v. Macalino*, 177 SCRA 185 [1989]).

Furthermore, there are no significant inconsistencies in Alejo's testimony. When he said he knew the armed men by their faces, he was referring to the armed men who entered his house and not to those who stayed outside as lookout, apart from the fact that the alleged infirmities are too petty as to impair his credibility (*People v. Collantes*, 208 SCRA 853 [1992]). Finally, it is legally inconsequential for accused-appellants to capitalize on the so-called inadmissible character of their forced confessions since, apart from this unfounded assumption, the open court declarations of the witnesses for the prosecution are sufficient to warrant accused-appellants' perdition. And verily, the trial court did not consider the confessions in adjudging accused-appellants criminally culpable.

WHEREFORE, the appeal is DISMISSED for lack of merit and the decision of the court a quo is affirmed in toto. SO ORDERED.

Feliciano, (Acting Chairman), Bidin, Davide, Jr., and Romero, JJ., concur.

[*] Hugo E. Gutierrez, Jr., J., on terminal leave.

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