

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. PETER CADEVIDA AND ROMEO DIDAL, ACCUSED-APPELLANTS.

G.R. No. 94528. March 01, 1993

Ponente: NOCON, J.

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NOCON, J.:

The accused-appellants, Peter Cadevida and Romeo Didal, were charged with the crime of robbery with homicide in Criminal Case No. 6778 before the Regional Trial Court, Seventh Judicial Region, Branch 31, Dumaguete City, Negros Oriental. The information filed in said case reads, as follows:

"That in the evening of February 3, 1985, at Sitio Diay, Barangay Dahili, Mabinay, Negros Oriental, Philippines, and within the jurisdiction of this Honorable Court, the said accused conspiring and confederating together and mutually helping each other, did then and there, wilfully, unlawfully and feloniously, by means of violence, that is, (killed) their victim, one Sopriano Yuson, and with intent of gain then and there took, stole and carried away Ten Thousand Seven Hundred (P10,700.00) Pesos from said Sopriano Yuson.

Contrary to Article 293 in relation to paragraph 1 of Article 294 of the Revised Penal Code, with the aggravating circumstance(s) that the foregoing offense was committed (during) nighttime and (sic) in an uninhabited place, and with ignominy when the accused cut the neck of the victim." [1]

After trial on the merits, the court below rendered its decision on June 1, 1990, the dispositive portion of which reads, as follows:

"In view of the foregoing considerations, the Court finds the accused Peter Cadevida and Romeo Didal guilty beyond reasonable doubt of the crime of robbery with homicide.

Under paragraph 1, Article 294 of the Revised Penal Code, the penalty for robbery with homicide is reclusion perpetua to death. Without any aggravating circumstance that can properly be appreciated against herein two accused, the Court sentences each to suffer the penalty of reclusion perpetua, to indemnify jointly and severally, the heirs of the deceased Sopriano Yuson in the amount of P30,000.00, to restitute to Alberto Yuson the sum of P10,000.00 taken from said victim, and to pay the proportionate costs.

SO ORDERED." [2]

Hence, the present appeal.

The facts of this case, as culled from the brief filed by the Office of the Solicitor General are, as follows:

"(At around 5:00 in the morning of) February 3, 1985, Alberto Yuson gave his eldest son Sopriano, TEN THOUSAND PESOS (P10,000.00) and asked him to go to Da(h)ili, Negros Oriental to fulfill his agreement with Teodoro Oracoy to pay and buy his land (pp. 6-9, TSN, September 3, 1985; p. 8, TSN, October 14, 1985).

At about 7:00 o'clock in the evening, Sopronio together with both appellants went to the store and after they drank one (1) pint of 'tuba' they walked away (pp. 3-13, TSN, July 17, 1986).

At about 11:00 o'clock in the morning of February 4, 1985, Emilio Cocayco reported to barangay councilor Ebenezer Zuniega that an unidentified headless body was found at the Diay River (pp. 5-6, TSN, December 17, 1985).

Both Emilio Cocayco and barangay councilor Ebenezer (Z)uniega went to the PC Detachment to report the matter (p. 7, TSN, December 17, 1985).

After receiving the report, the (sic) Assistant PC Detachment Commander Romarico Ilumba together with his companions responded to verify the report (pp. 7-8, TSN, December 17, 1985; pp. 5-7, TSN, November 12, 1987).

Upon arrival at the crime scene, they discovered a headless body with several stab wounds (p. 9, TSN, December 17, 1985) and warned the onlookers not to touch the headless body for it would be subjected to medico-legal examination (p. 8, TSN, November 12, 1987).

An investigation ensued and they (Ilumba and company) learned from three (3) witnesses (namely, Eva Suede, Shirley and Felipe) that they saw the appellants together with a stranger (Sopronio Yuson) drinking 'tuba' at Eva's store (pp. 9-11, TSN, November 12, 1987; pp. 4-7, TSN, July 1986).

Appellants (have been) known to the investigators since August 1984, because appellants were undesirables who engaged themselves in 'panghilabut' (stealing) from people and they (were) made to stay in the PC Detachment to do the chores of cooking food, chopping firewoods and fetching water. But on February 3, 1985, both appellants did not sleep at the PC Detachment and on February 4, 1985, both did not report (pp. 13-17, TSN, November 12, 1987).

On February 5, 1985, Julio Cadusale (uncle of Sopronio), Billy and Junior (both brothers of Sopronio) were informed by Primo Oracoy and Felipe about a headless body at the Diay river. Thereafter, all of them went to the PC Detachment in barrio (Dahili) to report the finding of the headless body and to see it. Together with the PC they proceeded to Diay River and were able to identify the headless body of Sopronio Yuson (pp. 4-13, TSN, September 5, 1986).

Thereafter, the PC authorities apprehended both appellants and were brought to the PC Detachment (p. 14, TSN, September 5, 1986).

Thereat, both appellants at first denied any participation when asked about the killing of Sopronio Yuson. However, after taking lunch, they were investigated separately. They voluntarily, out of remorse of their conscience, admitted the killing and accompanied the PC to the place where they buried the head of Sopronio Yuson (p. 18, TSN, September 5, 1986; pp. 19-20, TSN, November 12, 1987; p. 15, TSN, December 15, 1985). They were able to exhume the missing earless head of the victim (pp. 16-17, December 17, 1985; pp. 18-20, TSN, September 5, 1986).

The headless body and earless head were examined by the medico-legal officer, Dr. Herminio Garcia, the municipal health officer, who concluded in his medical findings (Exh. 'C') that the cause of death was the fatal wounds and the chopping of the head from the body (pp. 4-10; 32-33, TSN, March 6, 1987; p. 21, TSN, September 5, 1986; p. 28, TSN, November 12, 1987). He advised that it be buried (p. 22, TSN, September 5, 1986; p. 12, TSN, March 6, 1987).

Upon learning of the fate of his son Sopronio, Alberto Yuson went to Teodoro Oracoy to inform him that his son was killed and robbed of the money intended for the purchase of his land (pp. 14-15, TSN, September 3, 1985)."[3]

Summing up the assignments of error in this appeal, both accused-appellants dispute the decision of the trial court finding them guilty of the crime of robbery with homicide on the basis of proven circumstantial evidence.

To substantiate the aforementioned assignment of errors, accused-appellant Peter Cadevida asseverates that his act of paying what they drank is inconsistent with the charge of robbery. He did not know that the victim had money. Its loss was not even sufficiently established. He stayed in his house from 3:00 in the afternoon of February 3, 1985 up to February 4, 1985. This testimony was corroborated by his mother and his neighbor, Teresito Ariston. It was the PC soldiers who brought them to the Diay river wherein they were compelled to pose for pictures, carrying the head of the victim.

For his part, accused-appellant Romeo Didal argues that the prosecution failed to present any evidence to prove the existence of the money allegedly in the victim's possession. It failed to establish that there was an actual taking of personal property belonging to another. The money was never recovered. They were brought to the Diay river and made to pose with the head of the victim.

The Office of the Solicitor General supports entirely the questioned decision of the trial court.

Circumstantial evidence is sufficient for conviction if:

- 1) There is more than one circumstance;
- 2) The facts from which the inference are derived are proven; and
- 3) The combination of all the circumstances is such as to produce a conviction beyond reasonable doubt.[4]

The prosecution was able to prove the following circumstantial evidence:

- 1) At around 5:00 in the morning of February 3, 1985, the victim left his residence with P10,000.00 in his possession.
- 2) The accused-appellants and the victim left the store of Eva Suede after drinking tuba in the evening of February 3, 1985.
- 3) On February 4, 1985, the victim was found headless, naked and with multiple stab wounds. The P10,000.00 was missing.
- 4) The accused-appellants were unusually absent in the PC Detachment where they stayed, from 3:00 in the afternoon of February 3, 1985 until the following day, February 4, 1985.
- 5) They voluntarily led the PC soldiers and civilians to the spot along the Diay river where the head of the victim was buried, and dug it up.

The arguments of the accused-appellants dwell persistently on the last two circumstances.

With respect to the circumstance that they were absent in the PC detachment at about the time the crime was committed, accused-appellants seek sanctuary in the defense of alibi, to wit, that they were in their respective homes.

Alibi is an inherently weak defense. It will be accepted only upon the clearest proof that the accused-appellants were not or could not have been at the scene of the crime when it was committed.[5] They failed to prove that it was impossible for them to reach said place, which happens to be adjacent to their respective residences.[6]

As regards the circumstance that the accused-appellants voluntarily led the PC soldiers and civilians to the spot along the Diay river wherein they dug up the head of the victim, accused-appellants gave a different version. According to them, they were taken to the Diay river by the military and then ordered to pick up the head which was placed on top of a stone.

CIC Romarico Ilumba, Assistant PC Detachment Commander, testified on this significant circumstance:[7]

"Q.

That same afternoon of February 5, 1985, you and (sic) Peter Cadevida and Romeo Didal went to the place where the head is said to have been found?

A.

Yes, they were the ones who led the way to look for the same.

Q.

Who were with you, aside from Peter Cadevida and Romeo Didal that afternoon of February 5, going to the place where the head was found?

A.

My companions in the detachment and also, there were civilians whom I could not identify because of their number.

Q.

Were you able to reach the place where you were led by Peter Cadevida and Romeo Didal?

A.

Yes, sir.

Q.

When you reached the place what did Peter Cadevida and Romeo Didal do?

A.

Upon reaching the place, since we did not kn(o)w where it was buried and since they were the ones who kn(e)w, they dug and found it. After that, I got a camera and took pictures.

Q.

How far was the severed head where it was unearthed by Peter Cadevida and Romeo Didal to where the headless body was found?

A.

More or less about (sic) 30 meters.

Q.

Before Romeo Didal and Peter Cadevida unearthed the head, do you know if there were other people who knew where that head was buried?

A.

No sir because it was difficult to identify where that head was buried because there was water that was dribbling and the soil was wet so that it is very difficult to locate and it is a little muddy.

Q.

All right, on that spot where the head was buried, is there water flowing over it?

A.

Yes, sir, there was water flowing from the stone located at the other portion going to the river.

Q.

About how deep was that water flowing over that portion where the head was buried?

A.

It was very shallow, just this deep (witness indicating a deepness of around, half an inch), just enough that water could pass.

Q.

That place where the head was buried, is it still part of the Diay river?

A.

Yes, sir, a little bit in front. It was just near the bank of the river.

Q.

About how deep was the hole where the head was buried?

A.

Almost 1 foot, or more than 1 foot.

Q.

Who actually of the two excavated the head?

A.

The two of them."

His testimony was corroborated by Ebenezer Zuniega, the barangay councilor. The trial court found their testimonies straightforward, clear and convincing. No evil or improper motive has been imputed against them for testifying against the accused-appellants. In the case of CIC Ilumba, he enjoys the presumption of regularity in the performance of his official duties.[8] In contrast, the trial court found the testimonies of the accused-appellants unworthy of credit because of patent discrepancies, inconsistencies and equivocations, to wit:[9]

"Accused Peter Cadevida during direct examination declared that he was forced to pick up the head because the military cocked their rifles. They were not, however, maltreated or manhandled. (But) on cross-examination, he contradicted himself by alleging that he was mauled. On re-direct examination, he allege(d) that when he refused to pick up the head, he was mauled many times by four soldiers whom he could not recognize because they were many. (Tsn, January 11, 1990, p. 21)

On the other hand, accused Romeo Didal did not allege any maltreatment, or manhandling by the military against them. It was only (on) cross-examination that he alleged the military cocked their rifles when they were told to pick up the head. (Tsn, January 3, 1989, p. 37). He categorically admitted that from the time they were picked up, on their way to and at the detachment, and from there to the Diay river, the PC soldiers were just friendly and good to them. (Tsn. January 3, 1989, pp. 20 and 24)."

We shall not disturb the finding of the trial court on the credibility of witnesses, as it was in a better position to appreciate the same, having heard their testimonies and observed their deportment during the trial.[10]

The other allegations of the accused-appellants, being inconsequential, do not deserve any discussion.

The unbroken chain of circumstantial evidence points unerringly to the culpability of the accused-appellants. But solely for the death of the victim. We cannot go along with the trial court in convicting them of the crime of robbery with homicide, taking into consideration the following testimonies:

- 1) the victim left his residence with P10,000.00 to be delivered to Teodoro Oracoy at Sitio Diay, Barangay Dahili, Mabinay, Negros Oriental, at around 5:00 in the morning of February 3, 1985;[11]
- 2) at about 7:00 in the evening of the same day, the accused-appellants and the victim were drinking tuba at Eva Suede's store which is located at the same barangay; later, they left together;[12] and
- 3) on the following day, the headless body of the victim was found at the Diay river.[13]

It is evident from the foregoing that not one shred of evidence had been presented by the prosecution showing that the accused-appellants knew of the existence of the money in the victim's possession; much less is there any positive proof that the victim still had the money in his possession at the time he was in the company of the accused-appellants. Besides, a considerable length of time had already elapsed between 5:00 in the morning when the victim allegedly received the money from his father and 7:00 in the evening of February 3, 1985 when the former went with the accused-appellants to the store of Eva Suede to drink tuba. It is possible that the victim had already disposed of the money between this period. It would seem, therefore, that the trial court's conclusion that the "testimonial and documentary evidence adduced against the accused are more than sufficient to establish their guilt beyond reasonable doubt"[14] for the crime charged, is based on a mere inference or conjecture. Well-entrenched in Our jurisprudence is the principle that in order to sustain a conviction for the crime of robbery with homicide, it is necessary that the robbery itself be proven as conclusively as any other essential element of the crime. Where the evidence does not conclusively prove the robbery, the killing of the victim would be classified either as a simple homicide or murder, depending upon the absence or presence of any qualifying circumstance, and not the crime of robbery with homicide.[15] In the present case, the circumstantial evidence is insufficient to sustain the conviction of the accused-appellants for the crime of robbery with homicide; and inasmuch as no circumstances qualifying the killing to murder was alleged in the information, We hold them liable for homicide only.

The trial court was correct in its finding that conspiracy exists in this case. Both accused-appellants and the victim left together after drinking tuba. The differences in width of the multiple stab wounds inflicted on the body of the victim indicate the use of two weapons by more than one person.[16] Both accused-appellants exhumed the head of the victim. Conspiracy can be inferred from and proven by the acts of the accused themselves when said acts point to a joint purpose and design, concerted action and community of interests.[17]

Likewise, the trial court was correct in excluding the prosecution's evidence with respect to the aggravating circumstances of recidivism and habitual delinquency because these were not alleged in the information and their presentation and offer were vigorously objected to by the defense counsel. This is in consonance with the case of *People v. Martinada, et al.*,[18] where We ruled that "[w]hile it is true that to prove recidivism, it is necessary to allege the same in the information and to attach thereto certified copies of the sentences rendered against the accused, such aggravating circumstance may still be given credence by the trial court if the accused does not object to the presentation of evidence on the fact of recidivism." It is plain enough that this pronouncement applies specifically to recidivism but We do not see any reason why it cannot be applied by analogy to habitual delinquency, which is also a form of plurality of crimes.

Again, We are in conformity with the trial court that the aggravating circumstances of nighttime, uninhabited

place and ignominy are not present in this case. There is no evidence on record to show that: a) nighttime was purposely and deliberately sought by the accused-appellants to facilitate the commission of the crime;^[19] b) the place was uninhabited, as in fact, there are houses in the vicinity;^[20] and c) means were employed or circumstances surrounded the act tending to make the effects of the crime more humiliating.^[21]

Considering that neither aggravating nor mitigating circumstances attended the commission of the crime, We shall impose the penalty of reclusion temporal in its medium period.^[22]

WHEREFORE, the decision appealed from is hereby MODIFIED. The accused-appellants are found guilty of homicide and each of them is hereby sentenced to an indeterminate sentence of imprisonment from 6 years and 1 day to 17 years and 4 months. The amount of indemnity for the death of the victim is increased to P50,000.00. The order of the trial court for restitution of the missing P10,000.00 is deleted.

SO ORDERED.

Narvasa, C.J., (Chairman), Padilla, Regalado, and Campos, Jr., JJ., concur.

[1] P. 9, Rollo.

[2] Pp. 472-473, Rollo.

[3] Pp. 563-567, Rollo.

[4] *People v. Bicog, et al.*, G.R. No. 76529, 187 SCRA 556 (1990).

[5] *People v. Peralta*, G.R. No. 67702, 193 SCRA 9 (1991).

[6] P. 2, TSN, Jan. 3, 1989; p. 22, TSN, July 20, 1989.

[7] Pp. 21-24, TSN, November 12, 1987; underscoring supplied.

[8] *People v. Vocente, et al.*, G.R. No. 80533, 188 SCRA 100 (1990).

[9] Pp. 468-469, Rollo.

[10] *People v. Arcega*, G.R. No. 96319, 207 SCRA 681 (1992).

[11] Pp. 8-10, TSN of Alberto Yuson, Sept. 3, 1985.

[12] Pp. 4-9, TSN of Eva Suede, July 17, 1986.

[13] P. 6, TSN of Ebenezer Zuniega, Dec. 17, 1985.

[14] P. 471, Rollo.

[15] *People v. Pacala, et al.*, G.R. No. L-26647, 58 SCRA 370 (1974).

[16] P. 11, TSN of Dr. Herminio Garcia, March 6, 1987.

[17] *People v. Bausing, et al.*, G.R. No. 64965, 199 SCRA 355 (1991).

[18] G.R. No. 66401-03, 194 SCRA 36 (1991).

[19] *People v. Velaga, Jr.*, G.R. No. 87202, 199 SCRA 518 (1991).

[20] *People v. Budol*, G.R. No. L-48010, 143 SCRA 241 (1986).

[21] *US v. Abaigar*, 2 Phil. 417.

[22] Article 249 in relation to Article 64 of the Revised Penal Code.

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