

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RUDY ABEJERO, AND MELANIO CADALIN, ACCUSED-APPELLANTS, VICTOR DOE, MICHAEL DOE, PETER DOE AND PAUL DOE, ACCUSED.

G.R. No. 95455. March 23, 1993

Ponente: NOCON, J.

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NOCON, J.:

Accused-appellants Rudy Abejero and Melanio Cadalin, together with four other unidentified accused, all surnamed "Doe", were charged in the Regional Trial Court of Negros Oriental, Branch 31, Dumaguete City, with the crime of robbery with homicide and frustrated homicide under the following information:

"That at about 9:00 o'clock, more or less, in the evening of August 18, 1989, at Sitio Luan-Luan, Barangay Canaway, Municipality of Siaton, Province of Negros Oriental, Philippines, and within the jurisdiction of the Honorable Court, the above-named accused, conspiring and confederating together, mutually helping one another and acting under the same accord and purpose, armed with deadly weapons, with intent of gain and with the use of force, intimidation and violence upon their victims, spouses Enrique and Josefina Lastimado, and taking advantage of nighttime to avoid identification, with intent of gain, did then and there willfully, unlawfully and feloniously enter the house of Enrique Lastimado and Josefina Lastimado, husband and wife, respectively, and once inside demanded money and guns from the couple and because they were not satisfied with the victims' (accommodations) of the money and gun mentioned, (ransacked) everything inside the house, got P2,000.00 and air gun and other personal belongings, then Rudy Abejero slapped Enrique Lastimado and in a sudden, Victor Doe hacked the former's neck twice causing him to instantly die and Rudy Abejero simultaneously stabbed the wife, Josefina Lastimado in the stomach, thus Rudy Abejero performing all the acts of execution which would produce the crime also of robbery with homicide as a consequence but which nevertheless did not produce it by reason of causes independent of the will of the perpetrator, that is by timely medical attendance afforded her.

Contrary to Section 294, paragraph 1 and 2 in relation to Article 6 of the Revised Penal Code."^[1]

The four unidentified accused remained at large so the arraignment and the trial of only two accused, herein appellants Abejero and Cadalin, ensued. After which, a decision^[2] was rendered on August 15, 1990 convicting the appellants as charged and disposing as follows:

"In view of the foregoing considerations, the court finds the accused Rudy Abejero and Melanio Cadalin guilty beyond reasonable doubt of the crime of robbery with homicide and frustrated 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 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 Enrique Lastimado the sum of P30,000.00 and to pay said heirs the sum of P2,000.00 taken from said deceased and spouse Josefina Lastimado by herein accused and to pay proportionately the costs of action.

“SO ORDERED.”[3]

As found by the trial court, the facts of the case are as follows:

On August 18, 1989, about 9:00 o'clock in the evening, while complainant Josefina Lastimado and her husband Enrique Lastimado were sitting in the balcony of their house at Luan-Luan, Siaton, Negros Oriental, they heard their dogs bark and saw a group of men approached their house. The group greeted them, saying "good evening nang, good evening nong."

Unsuspectingly, Enrique Lastimado opened the door of their house while complainant went near him to take a look. She saw at the foot of the stairs of their house, six men, all armed with bolos. She recognized one of them as appellant Rudy Abejero.

The group reiterated their greeting and requested that the couple pacify their dogs as they were good people. Thereafter, four men in the group, including appellant Abejero, went upstairs while the two other men remained downstairs.

Complainant's husband offered supper to the group who went up the stairs but the four declined. Appellant Abejero then announced the group's purpose to get the gun of the Lastimados and some money. The spouses replied that they had only P850.00 and an air gun. Apparently irked, the men immediately held the spouses and wandered around the house, searching and ransacking it for whatever valuable things they could find. They succeeded in finding P850.00 - the proceeds from the sale of a cow, P220.00 - the savings of the children, P600.00 - the savings in the piggy bank, a radio, an air gun and other personal belongings.

Unsatisfied with their hoard, appellant Abejero insisted that the spouses show where the gun was being kept. Again, the spouses answered that they did not have any. At this point, appellant Abejero suddenly slapped Enrique Lastimado and hacked him with a bolo twice at the neck. Enrique died instantly. Then, a companion of appellant Abejero, who later was claimed to be appellant Melanio Cadalin, stabbed complainant at the right side of her stomach with a knife. Thereafter, the group fled with their loot. Complainant inched her way towards the place where her husband fell and lay down beside him.

At 10:30 p.m., that same evening, the children of the Lastimados arrived from a local dance party. With the help of neighbors, they brought the complainant to the Siaton Hospital. From there, she was rushed to the Provincial Hospital where she underwent an operation and was treated for two weeks.

Enrique Lastimado was buried the next day after the robbery or on August 19, 1989.

Appellant Abejero raised as his lone assignment of error the following:

"THE TRIAL COURT GRAVELY ERRED AND COMMITTED GRAVE ABUSE OF DISCRETION IN THE APPRECIATION OF THE FACTS AND IN GIVING CREDENCE TO THE TESTIMONY OF JOSEFINA LASTIMADO."[4]

On the other hand, appellant Cadalin raised the following assignment of errors:

I

"THE TRIAL COURT ERRED IN GIVING WEIGHT TO THE TESTIMONY OF JOSEFINA LASTIMADO WHICH WAS INCONSISTENT WITH HER SWORN STATEMENT (AFFIDAVIT) SHE EXECUTED BEFORE THE MUNICIPAL TRIAL JUDGE OF SIATON, NEGROS ORIENTAL.

II

"THE TRIAL COURT ERRED IN REJECTING THE DEFENSE OF ALIBI SET UP BY THE ACCUSED MELANIO CADALIN.

III

"THE TRIAL COURT GRAVELY ERRED IN FINDING THE ACCUSED GUILTY BEYOND REASONABLE DOUBT OF THE CRIME CHARGED."[5]

Appellant Abejero denies the crime imputed against him claiming that the complainant's accusation is utterly incredible and hence, unworthy of belief. He admits that while his defense of alibi is inherently weak, it is the truth and swears by it.

Appellant Abejero pointed out that complainant Josefina Lastimado had testified that she knew him for nine (9) years since 1982 when they had a previous confrontation at the Siaton Police Station where he was accused of stealing a pig from the Lastimados and ordered by a certain Pat. Espina to pay the amount of P200.00. On cross-examination, complainant stated in detail what transpired during the robbery including the fact that when she was stabbed by one of the companions of appellant Abejero, the latter looked at her and their eyes met. He knew then that she was still alive and conscious when the group left the Lastimado's residence. To appellant Abejero, such testimony is contrary to human experience as an identified criminal will never leave behind a survivor.

The core of appellant Abejero's defense is that since he has been pictured as a ruthless criminal, well-known to the complainant, it is highly inconceivable that he would leave behind a survivor who would be able to testify against him. He asserts that the only logical conclusion is that, somebody else, not him, was the perpetrator, possibly a stranger to complainant who felt himself safe from possible identification. To cap his arguments, appellant Abejero asserted that after August 18, 1989, he behaved properly and not like a criminal. In fact, when he was arrested by the police he was baking bread to sell to residents of his locality. Had he committed the crime charged, he would have fled to a distant place.

We find the foregoing arguments devoid of merit.

Appellant Abejero was positively identified by complainant as one of the perpetrators of the robbery with homicide and frustrated homicide. Complainant could not have been mistaken in her identification because (1) she had known appellant Abejero for nine (9) years; (2) their house, where the crime took place, was adequately lighted outside by the full moon and inside by two kerosene lamps; (3) the perpetrators did not wear masks at that time; and (4) they stayed inside their house for about 40 minutes.

Besides, there is no showing that complainant was impelled by an evil motive in testifying against appellant. Hence, the defense of alibi cannot prevail over his positive identification.

The fact that complainant did not die does not mean that she was spared by appellant and his companions. The testimony of Dr. Clemente Hipe, her attending physician, showed that complainant was left in a very critical condition and it was only the timely medical attention given her that saved her life, to wit:

"Q:

With that condition as you have stated, what do you think would have happened to her?

A:

Definitely, this patient would have died if no medical attention was given and [no] operation was done.

Q:

Surgery was done in the last stage?

A:

Yes.

Q:

What actually did you do?

A:

We operated her. We opened the abdomen.

Q:

Was there injury inflicted on the vital organ?

A:

Yes. We operated the patient, we found out that the abdominal cavity was penetrated and there was perforation. There was injury or perforation on the helium. Helium is the portion of the small intestine, and there was laceration on the mysentery. Mysentery is composed of blood vessels, and there was intersection of the common heliac vein. This heliac vein is big blood vessel which supplies blood to the abdomen. This was intersected.

Q:

This big blood vessel that was injured, could this be possible to have caused loss of blood?

A:

Yes.

Q:

How long did it take you, Doctor, to conduct the surgical operation?

A:

The anesthesia record says we started at 9:15 in the morning and we finished at 1:00 o'clock in the afternoon.

Q:

Before you administered anesthesia, were you able to talk to the patient?

A:

No, she was in pain. She was restless.

Q:

But you could say she could communicate intelligently?

A:

Yes, she could.

Q:

And Doctor, in this medical certificate identified as Exhibit A, there is only a stab wound, does that mean only 1 wound thrust in her body and inside her vital organ?

A:

Yes.

Q:

Naturally, if no medical attention was administered to her, she could have died?

A:

Yes."^[6]

For all intents and purposes, complainant was left by the appellant and his companions in such a condition that she could not have survived. Their only mistake is in not ensuring that she would not live to testify against them.

Appellant Cadalin, for his part, denied participation in the crime charged. He claims that he was in his parents' house located at Sacsac, Manjuyod, Negros Oriental, which is more than a hundred kilometers from the scene of the crime on the date and time of the incident.

To establish his whereabouts, he presented his brother and sister who testified that he stayed with them the whole night when the crime supposedly took place. He also presented his employer who testified and showed proof that he reported for work on the 18th and 19th of August, 1989.^[7]

As against Cadalin's denial and alibi, We have the testimony of complainant pointing to him as one of the malefactors during her two-week stay at the Negros Oriental Provincial Hospital. Appellant Cadalin was then attending to his sick mother who was confined in the same hospital room as complainant. He stayed with his mother for four (4) days from August 24, 1989^[8] and returned on September 4, 1989, only to be arrested by elements of the Dumaguete City police upon the request of complainant's daughter.

A careful analysis of the facts leading to the identification and eventual arrest of appellant Cadalin; the evidence he presented as to his whereabouts on the date and time when the crime charged was committed; as well as the evidence of his co-accused will readily reveal an obvious lack of moral certainty as to his guilt.

As differentiated from the positive identification of appellant Abejero, the identification of appellant Cadalin is open to serious doubt. There is no question on the identification of appellant Abejero because he was known to complainant years back and was constantly seen by her when he used to court one Victoria Asonio whose house is just near the complainant's house. Besides, the house of appellant Abejero is only three (3) kilometers from complainant's house and said distance can be negotiated by walking for about forty-five (45) minutes. Thus, when she was asked about the incident by the police on August 21, 1989, she was able to name appellant Rudy Abejero right away as one of the malefactors.

On the other hand, complainant did not know appellant Cadalin except for the fact that she had allegedly seen him before at the market place of Siaton during St. John's Day. His identification as one of the malefactors came only after complainant and appellant's surprising encounter in the hospital room where complainant and appellant's mother were both confined. Appellant Cadalin stayed in the hospital for four (4) whole days from August 24, 1989 but it was only when he returned to the hospital on September 4, 1989 that complainant told her daughter that appellant Cadalin was one of those who robbed and assaulted them. For his part, appellant Cadalin showed no signs of guilt nor fear of being identified considering the length of time that he stayed in the same hospital room as complainant. Another factor worth considering is the fact that appellant Abejero and appellant Cadalin respectively testified that they do not know each other. This is strange for as alleged conspirators in a crime, they are supposed to know each other. Yet, the prosecution failed to rebut their respective allegations or to offer an explanation.

It is true that alibi is an inherently weak defense and becomes less plausible as a defense when it is mainly

established by the accused himself and his immediate relatives.[9] However, this is to be expected in this case. Since the crime charged was allegedly committed at bed time, the most credible witnesses on appellant's whereabouts would be his brother and sister. Their corroborating testimonies that appellant Cadalin was with them at home in a remote barrio, more than a hundred kilometers away from the scene of the crime, should not be rejected outright but considered along with other factors, such as the difficulty of the route to be traversed from Barangay Sacsac, Manjuyod, Negros Oriental to Sitio Luan-Luan, Barangay Canaway, Siaton, Negros Oriental; the unavailability of transportation; and the time of the night when the incident happened. All these could have rendered it physically impossible for appellant Cadalin to have been at the scene of the crime on the date and the time of the incident. Thus, the trial court should have looked upon his defense of alibi with favor and not rely heavily on the sole testimony of complainant identifying him because her so-called identification as already discussed hereinabove is unreliable.

We note that complainant had not been firm and consistent in her assertions. Her testimony in court that she was stabbed by appellant Cadalin contradicts her previous statement before Municipal Trial Judge Fe Bustamante that it was Rudy Abejero who had stabbed her. The trial court brushed aside the discrepancy on the ground that the complainant was then in a serious condition with difficulty in breathing and had just been administered anesthesia. We find such inconsistency not inconsequential and should have alerted the trial court into examining more closely the complainant's indictment of appellant Cadalin considering that her identification was likewise made when she was under such circumstances.

We have time and again emphasized that the prosecution must prove the guilt of the accused upon the strength of its own evidence rather than on the weakness of the defense.[10] In appellant Cadalin's case, the prosecution miserably failed to come up with a credible, persuasive and strong evidence for his conviction. His guilt has not been proven beyond reasonable doubt or with that moral certainty that convinces and satisfies the reason and conscience of those who are to act upon it. The totality of the circumstances in this case point to appellant Cadalin's innocence. Accordingly, his acquittal is in order.

WHEREFORE, the judgment of the Regional Trial Court of Negros Oriental, Branch 3, in Criminal Case No. 9017, dated August 15, 1990 is hereby MODIFIED as follows:

(1) As to appellant Rudy Abejero the judgment is AFFIRMED except as to the amount of civil indemnity to be paid to the heirs of the deceased Enrique Lastimado, which is hereby increased to P50,000.00 pursuant to present jurisprudence; and

(2) As to appellant Melanio Cadalin, the judgment is REVERSED and he is hereby ACQUITTED on reasonable doubt. Costs de oficio.

SO ORDERED.

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

[1] Rollo, pp. 2 and 3.

[2] Penned by Judge Jesus C. Magno.

[3] Rollo, p. 31.

[4] Brief for Accused-Appellant, Rudy Abejero, Rollo, p. 86.

[5] Brief for Accused-Appellant Melencio Cadalin, Rollo, p. 47.

[6] TSN, April 17, 1990, pp. 121-123.

[7] TSN, May 10, 1990, p. 276.

[8] Id, at pp. 297-298.

[9] People v. Sabillano, G.R. Nos. 93932-33, 198 SCRA 196 (1991).

[10] People v. Castelo, L-48670, 133 SCRA 667 (1984); People v. Padilla, G.R. No. 72709, 177 SCRA 129 (1989).

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