

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
MELENCIO & BAROC; MENDOZA,
DEFENDANT-APPELLANT.**

G.R. No. 96397, November 21, 1991

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

On May 21, 1984, the accused-appellant Melencio Mendoza was charged before the Regional Trial Court of Valenzuela, Metro Manila, Branch 172 with the crime of Robbery with Homicide and Serious Physical Injuries in an Information which reads:

"The undersigned Asst. Provincial Fiscal accuses Melencio 'Baroc' Mendoza of the crime of robbery with homicide and physical injuries, penalized under the provisions of Art. 294, paragraph 1, of the Revised Penal Code, committed as follows:

"That on or about the 9th day of June, 1981, in the municipality of Valenzuela, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, the said accused Melencio 'Baroc' Mendoza, with Romeo Esquillo y Cabacang, Roberto Marquez y Dionisio, and Jose Ramos y Austria who are already charged of the same crime in Crim. Case No. 4109-V-81 and another person who is still at large, armed with unlicensed firearms, conspiring and confederating together and mutually helping one another, did then and there wilfully, unlawfully and feloniously, with intent of gain and by means of force, violence and intimidation upon the spouses Felipe Alkuino and Eufrocina Trajano--Alkuino, take, rob and carry away with them a lady's handbag containing cash amounting to P30,545.00 and checks with total face value of P18,167.85 or a grand total of P48,712.85, belonging to the said spouses Felipe Alkuino and Eufrocina Trajano--Alkuino, to the damage and prejudice of the said owners in the total amount of P48,712.85;

"That by reason or on the occasion of the said robbery and for the purpose of enabling them to take, rob and carry away the said amount of P48,712.85 in cash and in checks, the herein accused Melencio 'Baroc' Mendoza, together with his co-accused and another person still at large, in pursuance of their conspiracy, did then and there wilfully, unlawfully and feloniously, with evident premeditation and treachery and taking advantage of their superior strength, attack, assault and shoot with firearms they were then provided the said spouses Felipe Alkuino and Eufrocina Trajano--Alkuino, thereby inflicting fatal physical injuries on said Felipe Alkuino which directly caused his death and serious physical injuries on said Eufrocina Trajano--Alkuino which required medical attendance for a period of one (1) to two (2) months and incapacitated her from performing her customary labor for the same period of time.

Contrary to law." (Original Records, pp. 1-2)

Upon arraignment on March 9, 1985, the accused-appellant pleaded not guilty to the crime charged. Trial proceeded and a decision convicting the accused was rendered by the trial court. The dispositive portion of the decision reads:

WHEREFORE, in view of the foregoing, the Court finds the accused Melencio 'Baroc' Mendoza guilty of the

crime of robbery with homicide and physical injuries and hereby sentences him to suffer the penalty of reclusion perpetua; to suffer all the accessory penalties provided by law; to indemnify the heirs of Felipe Alkuino in the sum of P30,000.00 without subsidiary imprisonment in case of insolvency, and to pay the costs." (Rollo, p. 36)

The antecedent facts as stated in the Appellee's Brief are as follows:

"In the morning of June 9, 1981, Romeo Esquillo, a painter, was in his house at Barangay San Gabriel, Malolos, Bulacan when he decided to go to a store nearby. At the store, he was approached by a certain Roberto Marquez, who convinced him to go to the latter's house. While in the house of Marquez, a person by the name of Romeo Magtoto arrived and he was introduced to Esquillo (TSN, May 31, 1985, pp. 8-12)

"Marquez, Esquillo and Magtoto on board a motorcycle driven by Marquez, went to Malanday. When they reached Malanday, a person, who was riding in a car approached them. Marquez told Esquillo that the man was Barok Mendoza (TSN, Ibid, pp. 16-17).

"The group thereafter went to the house of a friend of Barok Mendoza where they took some drinks. After the drinking session, they proceeded to Polo where they just stood by the street purportedly waiting for a friend to pass by (TSN, Id., pp. 26-27)

"When a red jeep (Isuzu pick-up KB) suddenly appeared, the group scrambled, boarded their vehicles and chased the vehicle which turned out to be that of the Alkuinos. Appellant rode in the car together with Ramos and Magtoto while Esquillo rode at the back of the motorcycle driven by Marquez (TSN, Id. pp. 33-34)

"When the motorcycle was already very close to the pick-up vehicle of the Alkuinos, appellant gave Esquillo a gun and told him that the occupants of the jeep have money and if he will not get the money he will kill him (Esquillo) (TSN, Id., pp. 40-41)

"Esquillo did what was commanded of him. When he jumped into the red jeep as ordered by Marquez, Esquillo poked the gun at the occupants of the vehicle and announced the holdup (TSN, Id., p. 40)

"Esquillo grabbed the bag containing money and checks worth P48,712.85. Eufrocina Alkuino and Esquillo grappled for possession of the bag when suddenly the gun went off. Eufrocina Alkuino felt that her middle finger was injured. At this point, Felipe Alkuino, the husband of Eufrocina, joined in the grapple until it went off again hitting him in the chest (See RTC Decision, p. 4).

"Esquillo ran with the bag but the contents thereof spilled out. Esquillo, Marquez and Ramos helped each other pick up the money and placed them inside the bag. (Ibid.)

"Eufrocina summoned for help and the people arrived immediately and brought Felipe to the hospital where he later expired. The cause of death, as found by Dr. Bienvenido Muñoz, supervising medico-legal officer of the NBI, is hemorrhage, acute, severe, secondary to gunshot wound. The victim suffered only one gunshot wound. Eufrocina later identified the man who poked the gun at them as Romeo Esquillo and the two others she saw in front of their vehicle when it suddenly stopped as Roberto Marquez and Jose Ramos. (Id.)

"In the meantime, Esquillo ran with the bag. He looked for his companions but they already left him. He was chased by the barrio people and was later arrested by a certain Sgt. Avelino Francisco (TSN, May 31, 1985, p. 48)

"Esquillo was brought to the Valenzuela Municipal Building where he was investigated. In the investigation conducted on him, after he regained consciousness, he named his companions in the robbery holdup as Roberto Marquez, Romeo Magtoto and Jose Ramos (TSN, July 7, 1986, p. 6). Esquillo then accompanied the Valenzuela police headed by then Lt. Carlos Tiquia and proceeded to Catmon, Malolos, Bulacan where Marquez and Ramos were arrested. Magtoto was able to elude the police and fled (TSN, September 15, 1986,

p. 5)

"An investigation was conducted on Marquez and Ramos. This time Marquez mentioned Melencio Mendoza as the Mastermind of the robbery holdup allegedly seconded by Esquillo. A team of Valenzuela police was formed and headed for Catmon, Malolos, Bulacan to track down Mendoza. The team waited for Mendoza as he was not home yet at that time. At around 10:00 p.m., Mendoza alighted from a passenger jeepney and he was informed about his alleged involvement in the robbery holdup to which accusation he vehemently denied. The police brought him to their headquarters for questioning.

"On June 10, 1981, a day after that robbery incident, Eufrocina Alkuino arrived at the Valenzuela Municipal Building as she was informed that the suspects in the robbery holdup were already apprehended and arrested. In the police line-up, Eufrocina Alkuino pointed to Esquillo, Marquez, Ramos and Mendoza. She pointed to Mendoza because, according to her, she heard Marquez and Esquillo telling the police that Mendoza was the mastermind of the holdup (see Decision, p. 7)

"In the preliminary investigation that was duly conducted by the Municipal Court of Valenzuela presided by Judge Serapio, Mendoza was dropped from the charge as no probable cause was found then to indict him to the crime of robbery with homicide and physical injuries (See Exh. 5).

"Three separate Informations were duly filed with the Regional Trial Court of Valenzuela, Branch 171; the first one docketed as Criminal Case No. 4109-V-81 against Esquillo, Marquez and Ramos for Robbery with Homicide and Serious Physical Injuries, and the second docketed as Criminal Case No. 4110-V-81 for illegal possession of firearm against Esquillo, and the third docketed as Criminal Case No. 4111-V-81 for illegal possession of firearms against Marquez.

"In the course of the trial of Criminal Case No. 4109-V-81 and Criminal Case No. 4110--V-81, Esquillo implicated Melencio Mendoza in the commission of the crime of Robbery. All the accused in the three criminal cases were convicted of the crimes charged against them.

"Subsequently, the Provincial Fiscal of Bulacan filed a separate Information charging Mendoza with the crime of Robbery with Homicide and Physical Injuries, which was docketed as Criminal Case No. 6252-V-84.

"In an order dated October 28, 1985 (TSN, October 28, 1985, pp. 3-4) in Criminal Case No. 6252-V-84, the trial court, acting on the motion of the prosecution and with the conformity of appellant and his counsel, allowed the testimonies of the following witnesses in Criminal Case No. 4109-V-81 and in Criminal Case No. 4110-V-81, to be adopted and made part of the evidence of the prosecution subject to further cross-examination by counsel for the appellant: (1) Dr. Bienvenido Muñoz, Supervising Medico Legal Officer, NBI, Manila; (2) Marlene Merdegia?Salangad, Forensic Chemist, PC Crime Laboratory, Camp Crame, Quezon City; (3) Vicente de Vera, Ballistician, PC Crime Laboratory, Camp Crame, Quezon City; (4) Technical Sgt. Flordelito S. Basul, Chief Clerk, Firearms Branch and Explosives Unit, Camp Crame, Quezon City; (5) Eufrocina Trajano-Alkuino; and (6) Jose Martin (see Decision, pp. 3-6)" (Appellee's Brief, pp. 4--10)

The defense of the appellant is premised on his allegedly having been somewhere else when the crime was committed. He claimed that he was working inside the bank on that day and presented the logbook of the security guard which showed his entering the place at 8:33 a.m. and leaving it at 5:32 p.m. The robbery happened at around 1:00 p.m. The appellant stated that he took his lunch at his place of work.

The accused-appellant now interposes this appeal, assigning the following as errors allegedly committed by the court a quo:

I

THE TRIAL COURT ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY OF THE CRIME CHARGED ON THE BASIS OF MERE ASSUMPTIONS AND CONJECTURES.

II

THE TRIAL COURT ERRED IN HAVING TAKEN JUDICIAL NOTICE OF THE TESTIMONIES IN CRIMINAL CASES NOS. 4109-V-81 AND 4110-V-81.

III

THE TRIAL COURT ERRED IN ENTERING A JUDGMENT OF CONVICTION WITHOUT THE REQUIRED QUANTUM OF EVIDENCE BEYOND REASONABLE DOUBT; AND IN NOT ENTERING A JUDGMENT OF ACQUITTAL. (Appellant's Brief, p. 80)

Melencio Mendoza contends that the trial court erred in basing its judgment of conviction on mere assumptions and conjectures.

The contention of the appellant is bereft of merit.

The records show that the witness, Mrs. Alkuino and the accused-appellant knew each other well. The latter was a bookkeeper in the bank where the Alkuinos maintained an account. Mendoza knew the details of their bank account so much so that he would make adjustments like transferring of funds from the Alkuino's savings account to current account whenever requested by said clients in order to properly fund checks issued by them.

As stated in the facts of the case, on the day prior to the incident (June 8, 1981), Mrs. Alkuino inquired from the appellant if the checks she issued to Alaska in the amount of P20,000.00 and P30,000.00 were already presented for collection. When the accused answered in the negative, Mrs. Alkuino informed Mendoza that she will deposit the necessary amount the following day.

From this, it can be concluded that Mendoza knew that the Alkuino couple would be depositing a big amount the following day in time before the checks are presented for collection.

As to Mendoza's relationship with Marquez, it was shown that the possibility of conspiracy is not remote. They were townmates and both belong to the same barangay. Thus, it can be said that they knew each other well.

We see no reason why Marquez would implicate a good friend in a serious crime if there was no truth to it.

The close relationship between the two and the access of Mendoza to bank records and his relationship with regular bank clients like the Alkuinos logically establish the connection between Mendoza and the crime.

The records do not show that Esquillo previously knew Mendoza. It was Marquez whom Esquillo knew. Marquez in turn knew Mendoza. Pieced together, the facts bring out a logical conclusion which is further established by the testimonies of other witnesses.

The accused-appellant further assails the court's having taken judicial notice of Esquillo's testimony in another case despite its not having been offered nor admitted because Mendoza was not an accused therein and he did not conform to the adoption of said testimonies in this case. He further contends that granting it were admitted as part of the prosecution's evidence in this case, it cannot be considered because it was repudiated by Esquillo himself.

This contention must likewise fail.

It is noted that when a motion to adopt the said testimonies of witnesses was made by the prosecution, the

appellant and his counsel did not object but instead gave their consent.

Moreover, Esquillo was confronted with portions of his testimonies in the previous cases which he merely denied or refused to explain. Said portions, thus, became part of his testimony which were duly subjected to cross-examination by the defense counsel.

When confronted with statements given in his previous testimony, it became apparent that Esquillo was trying to hide something but which he was not able to do when cornered by the judge. Thus, the appellant admitted:

"Q: Are you telling this court that you never testified in the sala of Judge Constantino or you testified but you were not asked those questions, so you did not give those answers?

A: I testified, your Honor.

Q: Since you have testified, are you trying to tell this Court that you were not asked those questions and those were not your answers, is that what you want this Court to believe?

A: Those were the questions asked of me, your Honor.

Q: How about the answers, were those your answers?

A: Yes, your Honor." (TSN., May 31, 1985, p. 42)

Anent the third assigned error where the appellant claims he was convicted without the required quantum of evidence because Mrs. Alkuino did not specify his role in the crime, we find the same wanting of any basis.

Portions of Esquillo's testimony describe in detail how appellant and his group hatched their plan. The same was corroborated by the testimonies of Mrs. Alkuino and other prosecution witnesses who had no known grudge against him. Thus, it has repeatedly been held that the testimony of witnesses not actuated by improper motives is entitled to full faith and credit (*People v. Patog*, 144 SCRA 429 [1986]; *People v. Cruz*, 191 SCRA 127 [1990]; *People v. Rabang*, 187 SCRA 682 [1990]).

The accused-appellant likewise contends that conspiracy was not proven.

Conspiracy has been established by the facts on record. The concerted action of each member pieced together and taken as a whole conclusively shows the existence of conspiracy.

It need not be shown by direct evidence. It may be inferred from the acts of all the accused (*People v. Abueg*, 145 SCRA 622 [1986]) and where each performs specific acts in the commission of the crime with such closeness and coordination that would indicate a common purpose or design, conspiracy is considered established beyond reasonable doubt (*People v. Petenia*, 143 SCRA 361 [1986]).

The accused-appellant assails the admission of the testimony of Esquillo.

As stated in the case of *People v. Ponce, et al*, G.R. No. 83694, May 31, 1991:

"It is true that there are doctrines to the effect that the testimony of a co--conspirator is not sufficient for conviction, unless supported by other evidence. The reason is that it comes from a polluted source. It must be received with caution because, as is usual with human nature, a culprit, confessing a crime, is likely to put the blame as far as possible on others rather than himself. But the aforesaid rule is not without exceptions. The testimony of a co--conspirator may, even if uncorroborated, be sufficient as when it is shown to be sincere in itself, because it was given unhesitatingly and in a straightforward manner and full of details which by their nature could not have been the result of deliberate afterthought (*People v. Cuya, Jr.*, 141 SCRA 351 [1986]).

In an effort to exculpate himself, Mendoza claims that he could not have been at the scene of the crime since he

was at his place of work from 8:30 - 11:45 and 11:55 - 5:30 on that day. He presented as proof a xerox copy of his time record, the logbook as prepared by the security guard on duty and a certification from a bank officer that he was present that day.

The defense of the accused is mainly based on alibi which this Court has consistently considered the weakest of all defenses.

To establish alibi, the accused must show that it was impossible for him to have been at the place where the crime was committed at the time of its commission (*People v. Abigan*, 144 SCRA 130; *People v. Coronado*, 145 SCRA 250 [1986]).

The appellant has failed to establish the impossibility of his presence at the scene of the crime considering that the distance between the bank and the place of the crime was only a few kilometers away. Also, the crime happened during lunch break where absence of the employees is not noticeable.

In view of the foregoing, we find no reversible error in the trial court's finding of conviction. However, as in *People v. Nunag*, G.R. No. 92570, April 22, 1991, we find the designation of the crime erroneous.

Thus, the case states:

"x x x there is no special complex crime as robbery with homicide and less serious physical injuries. The offense is denominated as robbery with homicide regardless of the number of homicides or injuries committed. These other circumstances merely serve as generic aggravating circumstances which can be offset by other mitigating circumstances (*People v. Pedroso*, 115 SCRA 599 [1982])."

WHEREFORE, the appealed decision is hereby AFFIRMED but MODIFIED. The appellant is found guilty of the special complex crime of robbery with homicide but indemnity is increased from THIRTY THOUSAND PESOS (P30,000.00) to FIFTY THOUSAND PESOS (P50,000.00) in accordance with recent rulings.

SO ORDERED.

Fernan, C.J., (Chairman), Bidin, Davide, Jr., and Romero, JJ., concur.

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