

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RICKY GALIT Y ADAMERO, INTOY LUCINDO Y REBADULLA, MARLON GALIT Y ADAMERO, AND RAQUEL TAGALOG Y ROTAMULLA, ACCUSED, INTOY LUCIN...

G.R. No. 97432. March 01, 1994

Ponente: BIDIN, J.

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BIDIN, J.:

On October 15, 1990, an information for robbery with homicide (Criminal Case No. 90-88018) was filed against accused Ricky Galit y Adamero, Intoy Lucindo y Rebadulla, Marlon Galit y Adamero, and Raquel Tagalog y Rotamulla before the Regional Trial Court, National Capital Judicial Region, Branch 47, Manila, allegedly committed as follows:

"That on or about October 8, 1990, in the City of Manila, Philippines, the said accused conspiring and confederating together and helping one another, did then and there wilfully, unlawfully and feloniously, with intent to gain and by means of force and violence upon person, to wit: by then and there suddenly entering VIRGIE's STORE, owned by AVELINO MATULAC y TRINIDAD, announcing it was a hold-up, take, rob and carry away cash money amounting to P45,000.00, Philippine Currency; That on the occasion of the commission of the crime of robbery and by reason thereof, the herein accused, in pursuance of their conspiracy, did then and there wilfully, unlawfully and feloniously, with intent to kill, attack, assault and use personal violence upon the said AVELINO MATULAC y TRINIDAD, owner of the said store, by then and there stabbing him on the chest with a bladed weapon, and as a result thereof, he sustained a mortal/stab wound which was the direct and immediate cause of his death.

"Contrary to law." (Rollo, p. 8).

After trial, the accused-appellants were convicted and sentenced to suffer the penalty of reclusion perpetua and likewise ordered to indemnify the heirs of Matulac the sum of P103,168.80 for actual damages, and P50,000.00 as moral damages. However, the trial court suspended the sentence with respect to Raquel Tagalog and Ricky Galit on the ground of minority pursuant to Article 189 of P.D. 603. The dis-positive portion of the trial court's decision dated January 11, 1991 reads as follows:

"WHEREFORE, premises considered, the Court finds the accused Ricky Galit y Adamero, Intoy Lucindo y Rebadulla, Marlon Galit y Adamero and Raquel Tagalog y Rotamulla guilty beyond reasonable doubt of the crime of Robbery with Homicide charged in the Information and hereby sentences them to suffer the penalty of Reclusion Perpetua, and all the accessories provided for by law. They are further ordered to pay jointly and severally the costs of this suit and to indemnify jointly and severally the heirs of the victim Avelino Matulac the sum of P103,168.80, Philippine Currency for actual damages, and the further sum of P50,000.00, Philippine Currency as moral damages. The sum of P900.00 recovered from the accused by police authorities are hereby ordered returned to Mrs. Virginia Matulac, the widow of the victim Avelino Matulac.

"However, accused Raquel Tagalog y Rotamulla and Ricky Galit y Adamero having been found to be youthful

offenders as defined in Art. 189 of PD 603, are entitled, to the mind of the Court, to the suspension of their sentence. Considering the reports of the Social Worker of this Court that the herein minors appear to have no confirmed delinquent tendencies, are first offenders and responsive to constitutional lifestyle that could enhance their inner growth, perhaps, giving them a chance to undergo treatment program while under suspended sentence would redound to their future betterment, this Court hereby orders their commitment to the care and custody of Mrs. Florcelia Rosas, Officer In-Charge of the National Training School for Boys, Camp Capinpin, Tanay, Rizal for rehabilitation until they shall have reached twenty-one (21) years of age or for a period as the Court may deem proper. Said Head Social Worker is directed to submit to the Court every four (4) months a written report on the conduct of said youthful offenders as well as the intellectual, physical, moral, social and emotional progress made by the accused, conformable with Art. 195 of PD 603 and to recommend to the Court, before the accused reach the age of majority whether this case against them should be discharged or the accused shall suffer the imposable penalty as hereinabove indicated.

"SO ORDERED."

Claiming innocence, accused-appellants Marlon Galit and Intoy Lucindo now interpose this appeal.

The facts of the case as summarized in the People's Brief are as follows:

"On October 8, 1990, at about 7:45 p.m., Avelino Matulac was watching television inside his grocery store - Virgie's Mini-Grocery - located at 826 Matimyas St., Sampaloc, Manila, with sales-ladies, Josefina Lucena and Anita Andales (TSN., October 31, 1990, pp. 14, 33).

"At that time four men, later identified as appellants Ricky Galit, Intoy Lucindo, Marlon Galit and Raquel Tagalog, approached the grocery store. Marlon Galit and Tagalog posted themselves at the entrance. Ricky Galit and Lucindo entered the store and announced a hold-up. Ricky Galit approached Lucena and boxed her twice on the stomach while Lucindo threatened Matulac with a knife. Matulac did not resist and offered them everything that they wanted, while Andales panicked and hid inside the comfort room (TSN., October 31, 1990, pp. 13-15; 32-39).

"In the course of the hold-up Lucindo stabbed Matulac. Lucena panicked and ran outside the grocery store towards a nearby beauty parlor also owned by Matulac. Raquel Tagalog, who stayed outside as a lookout, chased her but failed to catch up with her (TSN., October 31, 1990, pp. 16-17).

"Andales, hearing Matulac's cries for help - 'May saksak ako, may saksak ako, tulungan ninyo ako' - came out of the comfort room and saw the bloodied Matulac. Ricky Galit and Lucindo then scooped up about FORTY-FIVE THOUSAND PESOS (P45,000.00) from the cash box and fled. Andales shouted for help and together with an employee of the beauty parlor, they rushed Matulac to the University of Sto. Tomas Hospital (USTH) where he later expired (TSN., October 31, 1990, pp. 13-20; 32-39) because of:

'Penetrating stab wound, epigastrium, piercing the right lobe of the liver, diaphragm and inferior vena cava.'

(Exhibit "A", TSN., October 24, 1990, p. 6)

"During the incident, the cries for help of the victims did not go unnoticed. Raul P. Salvatierra, a Barangay Tanod of Barangay 525, Zone 52, was with friends near the crime scene when they heard the cries for help and saw a man with a knife (Tagalog) running past them. Salvatierra and two (2) companions gave chase. They caught up with Tagalog and subdued him after a brief struggle. Salvatierra turned Tagalog over to a policeman. He was later transferred to Precinct 4 of the Western Police District (TSN., November 8, 1990; pp. 6, 9, 13).

"During the investigation at Precinct 4, WPD, Tagalog identified his companions as his co-appellants herein and led the police to their hideout somewhere in Camachile, Quezon City. The police, however, failed to find his companions there. Tagalog then led the police to the house of one Reynaldo Villanueva at Joan of Arc, Gulod, Novaliches where the Galit brothers and Lucindo were arrested. The police recovered from them four

(4) knives and NINE HUNDRED PESOS (P900.00) cash in different denominations (TSN., November 7, 1990, pp. 7-15).

The defense presents a different version: Appellants allege that no robbery was committed. The stabbing of the victim was admitted by accused-appellant Intoy Lucindo, but the other three (3) accused denied participation therein. Accordingly, on October 8, 1990, Lucindo and the three (3) other accused were at the house of Reynaldo Villanueva in Joan of Arc, Gulod, Novaliches, Quezon City. The latter employed accused-appellants as vendors in his barbecue business. At around twelve noon, while preparing the barbecue to be sold that afternoon, the four (4) of them got to talking about how to earn more. They agreed that in order to have more income, it was best that they have their own capital to start their own barbecue business. Thus, they decided to secure a loan from a certain Cion Capoquiam, who lived in Espana, Manila, which was near the scene of the crime.

They sold barbecue at their respective stands from three o'clock to six o'clock that day. After work, the four of them met at the Welcome Rotonda and proceeded to the residence of Capoquiam. On their way to Capoquiam's place, they passed by the Virgie's Mini-Grocery Store, for snacks. It was around seven o'clock in the evening. The group ordered some bread and softdrinks. Lucindo ate inside the store while his three (3) companions remained outside the store. They paid their bill to Matulac but according to Lucindo, the change the former handed to him was short. Lucindo complained to Matulac and an altercation ensued. According to Lucindo, Matulac's loud voice put him to shame and he lost control of his temper. He stabbed Matulac once with a kitchen knife which he allegedly found in the store. Lucindo claims he threw the knife while he ran away from the scene of the crime (TSN, November 9, 1990, pp. 51-52). His three (3) companions scampered to different directions while Lucindo proceeded to Camachile, Quezon City. At around eight o'clock that evening, the police arrived at Lucindo's hideout and apprehended Lucindo (TSN, November 9, 1990, pp. 6-25) in Camachile.

Accused Raquel Tagalog corroborated the testimony of Lucindo on all points, except that according to Tagalog, after they took their snacks, he and Marlon Galit walked across the street, about twenty-five (25) meters away from the store of Matulac, while Lucindo and Ricky Galit remained at the store. Later, he saw Lucindo running, passing near the place where he stood with Marlon Galit. Lucindo was holding a knife and shouted at them: "Tumakbo na kayo" (TSN, November 26, 1990, pp. 11-13). Whereupon, Tagalog ran towards the direction of the Welcome Rotonda. He was chased and subsequently apprehended by the Barangay Tanod and the police. He denied being in possession of a knife, as alleged by the prosecution. He also denied that he chased salesgirl Lucena when the latter sought refuge at the nearby beauty parlor of the victim's wife.

Accused Ricky Galit also corroborated the testimonies of Intoy Lucindo and Raquel Tagalog. He testified that while they were eating their snacks, he told Lucindo that Matulac was a very cruel person. He recounted to Lucindo how Matulac had dropped a case of beer on his head when he was still employed at Matulac's store. After the snack, he, together with his brother Marlon and Tagalog, crossed the street while Lucindo went inside the store of Matulac. His narration regarding the flight of Lucindo tallied with the version of the other accused-appellants.

Marlon Galit's testimony also corroborated the testimonies of the other accused-appellants on all points, save for that portion where he testified that after eating their snacks, he and Raquel Tagalog crossed the street (Marlon Galit did not mention his brother, Ricky).

Reynaldo Villanueva, witness for the defense, testified that the Galit brothers were in his house at Joan of Arc, Gulod, Novaliches, in the evening of October 8, 1990. At around nine o'clock that evening, the police arrived at the aforementioned residence and arrested Villanueva and the Galit brothers. They searched the house and found cash amounting to nine hundred pesos (P900.00), as well as three (3) kitchen knives. The three men, together with Lucindo and Tagalog, were subsequently brought to Station 4 of the Manila Police, where several members of the

media, and two women, who later turned out to be salesgirls at the Virgie's Store, were waiting. The accused-appellants, together with Villanueva, were presented to the media and to the two women. The police asked the women to point to the persons who announced the "hold-up", and who stabbed Matulac. The women, whose hands were held by the police, pointed to Lucindo as the one who stabbed Matulac, and Ricky Galit as the one who entered the store. The following day, Villanueva and the accused-appellants were transferred to the Homicide Section of the Western Police District (TSN., November 8, 1990, pp. 39-67).

All four accused were found guilty, hence, this appeal, ascribing to the trial court the following errors:

"I. THE LOWER COURT ERRED IN GIVING WEIGHT AND CREDENCE TO THE CRIME REPORT (EXH. 'D') AS SOLE BASIS OF CONVICTION, HENCE, SAID COURT HAS COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION;

"II. THE COURT BELOW LIKEWISE ERRED IN HOLDING THAT CONSPIRACY EXISTED AMONG THE ACCUSED IN THE ALLEGED COMMISSION OF THE CRIME AS CHARGED IN THE INFORMATION;

"III. THE TRIAL COURT ALSO ERRED IN CONCLUDING THAT ROBBERY WITH HOMICIDE AS CHARGED IN THE INFORMATION WAS COMMITTED BY THE ACCUSED;

"IV. THE TRIAL JUDGE FURTHER ERRED IN NOT HOLDING THAT ACCUSED INTOY LUCINDO Y REBADULLA STABBED AVELINO MATULAC IN DEFENSE OF SAID ACCUSED'S HONOR;

"V. THAT FINALLY THE TRIAL COURT ERRED IN FINDING ACCUSED RICKY GALIT Y ADAMERO, INTOY LUCINDO Y REBADULLA, MARLON GALIT Y ADAMERO, AND RAQUEL TAGALOG Y ROTAMULLA GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF ROBBERY WITH HOMICIDE CHARGED IN THE INFORMATION."

(Rollo, p. 54, Brief of Accused-Appellants).

It is significant to note that while only two of the four convicted accused, namely: Marlon Galit and Intoy Lucindo filed a notice of appeal (Rollo, p. 34), the Brief of accused-appellants filed by counsel (Rollo, p. 54) argued on behalf of all the four accused-appellants and prays for the acquittal of "all the accused".

We find the first assignment of error questioning the validity of the trial court's decision convicting the herein accused-appellants, allegedly solely on the basis of the crime report and post-mortem examination, without merit. The trial court's decision was not based solely on the said documents. The trial court took into consideration the facts as narrated in the Crime Report as well as the testimonies of prosecution witnesses Josefina Lucena y Liwag, Anita Andales y Barrio, Ludy Neric and Raul P. Salvatierra, which testimonies confirmed the veracity of the aforementioned crime report (Decision dated January 11, 1991, p. 8). The trial court found the testimonies of the prosecution witnesses credible.

It is well-settled that the trial court is the best judge of whether or not a witness is credible. Its findings on the credibility of a witness are entitled to great weight and respect and will not be disturbed on appeal unless some facts or circumstances were overlooked that will affect the outcome of the case (People vs. Moreno, 208 SCRA 86 [1992]). In the case at bar, We do not find any circumstance which was overlooked in the appreciation of the facts. More than that, the trial court's decision was reached after accused-appellant Lucindo admitted during the direct examination in open court that he had indeed stabbed victim Matulac, thus:

"Q Going back to you, you said you lost your temper, what transpired next, Mr. witness?

"A I stabbed him.

"Q How many times, Mr. witness?

"A Only once, sir." (TSN, November 9, 1990, p. 23).

Anent the assailed finding of conspiracy by the trial court, we see no cogent reason to overturn the same. A conspiracy need not be proven by direct evidence. Proof of previous agreement to commit a crime is not essential to establish conspiracy. It may be inferred from the acts of the accused. The conduct of the accused-appellants before, during and after the commission of the crime may be considered to show the existence of conspiracy. It is sufficient that the accused be shown to have acted in concert pursuant to the same objectives. And where a conspiracy is proven, a showing as to who among the conspirators inflicted the fatal wound is not required to sustain a conviction (*People vs. Pinzon*, 206 SCRA 93 [1992]; citing *People vs. Abueg*, 145 SCRA 622; *People vs. Cabiltas*, 25 SCRA 112; *People vs. Tala*, 141 SCRA 240).

The acts of the accused clearly established conspiracy among them. Thus, they were together in going to the store of the victim that evening. Intoy Lucindo and Ricky Galit entered the store, while Marlon Galit and Raquel Tagalog acted as look-outs (by posting themselves at the entrance). Inside the store, Ricky Galit boxed salesgirl Lucena, to prevent her from giving aid to Matulac, who was then being subdued by Lucindo. As Lucena ran to the beauty parlor nearby, Tagalog chased her. After Lucindo had stabbed the victim, and Ricky Galit had scooped the money from the cash box, both ran out to the street and shouted at Marlon Galit and Tagalog to run away. All four of them ran in different directions. The fact that accused Ricky Galit, Marlon Galit and Raquel Tagalog ran away from the scene of the crime together with Intoy Lucindo the assailant, even though they did not stab the victim, is indicative of their conspiracy and guilt. Flight is indicative of guilt. Such behavior cannot be anything but positive and convincing evidence of their consciousness of guilt (*People vs. Lorenzo*, 200 SCRA 207 [1991]). Upon apprehension of Lucindo and the Galit brothers at the residence of Reynaldo Villanueva, nine hundred pesos (P900.00), part of the loot, and three (3) kitchen knives, were recovered from them.

Appellant Lucindo attempts to extricate himself from criminal liability by invoking the justifying circumstance of self-defense. This argument is untenable.

There is no criminal liability when a person acts in defense of his person or rights, provided the following circumstances are present: 1) unlawful aggression; 2) reasonable necessity of the means employed to prevent or repel it; 3) lack of sufficient provocation on the part of the person defending himself (Art. II, par. 1, R.P.C.). The foremost requirement of self-defense in order to be appreciated is unlawful aggression which is a sudden, unprovoked attack against the person defending himself. The person attacked must face a real threat to his life, safety or rights and the peril must be imminent or actual. If no unlawful aggression attributable to the victim is established, there can be no self-defense, either complete or incomplete (*People vs. Ganut*, 118 SCRA 35 [1982]). In the case at bar, there was no actual or imminent assault on appellant Lucindo by the victim. The victim was not even armed. All that the victim did was to raise his voice during the altercation with appellant Lucindo which, according to the said appellant, put him to shame. There was no unlawful aggression whatsoever on the part of the victim. Unlawful aggression presupposes an actual, sudden and unexpected attack or imminent danger thereof and not merely a threatening or intimidating attitude (*People vs. Rey*, 172 SCRA 149 [1989]).

With respect to the suspension of the sentence of accused Raquel Tagalog and Ricky Galit who are said to be youthful offenders, pursuant to Article 189 of P.D. 603 (The Child and Youth Welfare Code), we find the same to be erroneous.

As aforesaid, however, accused Ricky Galit and Raquel Tagalog did not appeal from the judgment of the trial court. Neither did the People question the suspension of their sentence. The benefits of suspension of sentence are not available where the youthful offender has been convicted of an offense punishable by life imprisonment or

death. The last paragraph of section 2 of Presidential Decree No. 1210, which amended certain provisions of P.D. 603, provides:

"The benefits of this article shall not apply to a youthful offender who has once enjoyed suspension of sentence under its provisions or to one who is convicted of an offense punishable by death or life imprisonment or to one who is convicted for an offense by the Military Tribunals." (Par. 4, Sec. 2, P.D. No. 1179, as amended by P.D. No. 1210; underscoring supplied)

The offense charged in this case, Robbery with Homicide, is punishable by reclusion perpetua to death (Art. 294(1), R.P.C.). As a matter of fact, the herein appellants were sentenced to suffer the penalty of reclusion perpetua. Consequently, the suspension of sentence as provided under Art. 192 of P.D. 603, as amended, does not apply to accused Raquel Tagalog and Ricky Galit.

Nonetheless, considering that the decision against accused Ricky Galit and Raquel Tagalog had become final, this Court can no longer alter the judgment rendered by the trial court however erroneous it may have been. This Court has no jurisdiction to pass judgment on an accused who did not appeal the sentence of conviction imposed by the trial court (*People v. Medrano*, 122 SCRA 586 [1983]).

This brings us to the manifestation dated April 17, 1993 filed by counsel for accused Ricky Galit praying for his release from the National Training School for Boys (NTSB) as recommended in the Final Report submitted by the Senior Officer of the NTSB on the ground that Ricky Galit had complied with the conditions of his rehabilitation.

In his Comment dated October 15, 1993, the Solicitor General interposed no objection to the final release of Ricky Galit from the custody of the NTSB, DSWD, Tanay, Rizal, provided accused Galit's civil liability is not extinguished as provided in Articles 198 and 201 of the Child and Youth Welfare Code.

Be that as it may, it is not the responsibility of this Court to order the release of accused Ricky Galit without the benefit of a review of the recommendation of the Department of Social Welfare by the trial court. Art. 196 of PD 603 provides:

"Art. 196. Dismissal of the case. - If it is shown to the satisfaction of the court that the youthful offender whose sentence has been suspended, has behaved properly and has shown his capability to be a useful member of the community, even before reaching the age of majority, upon recommendation of the Department of Social Welfare, it shall dismiss the case and order his final discharge."

It is therefore clear that in cases where the DSWD recommends the discharge of a youthful offender, it is the trial court before whom the report and recommendation is subject to judicial review. Recommendation alone is not sufficient to warrant the release of a youthful offender. In reviewing the DSWD's recommendation, the trial judge must not base his judgment on mere conclusions but should seek out concrete, material and relevant facts to confirm that the youthful offender has indeed been reformed and is ready to re-enter society as a productive and law-abiding citizen.

Caution, however, is given to the trial court. To begin with, the youthful offender is not to be tried anew for the same act for which he was charged. The inquiry is not a criminal prosecution but is rather limited to the determination of the offender's proper education and rehabilitation during his commitment in the Training Center and his moral and social fitness to re-join the community.

WHEREFORE, the appealed decision is **AFFIRMED** with respect to accused/appellants Marlon Galit and Intoy Lucindo. In view of the favorable recommendation for the release of accused Ricky Galit by the Senior Social Welfare Officer of the NTSB, DSWD, Tanay, Rizal, the court a quo is hereby directed to review the same and to

pronounce judgment thereon as it may deem proper under the circumstances without prejudice to any civil liabilities accused Ricky Galit may have incurred by reason of his conviction.

SO ORDERED.

Feliciano, (Chairman), Romero, Melo, and Vitug, JJ., concur.

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