

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. NORBERTO CARROZO @ “BORBING”; CLAVER CARROZO @ “CLAVER”; DOMINADOR ANTOJADO @ “BADIC”; DOMINGO POLINGA @ “DOMING”; WILFREDO MA...

G.R. No. 97913. October 12, 2000

Ponente: PURISIMA, J.

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PURISIMA, J.:

Appeal interposed from the Decision of Branch 10 of the Regional Trial Court, Abuyog, Leyte, finding appellants guilty of Robbery in Band with Multiple Murder in Criminal Case No. 446.

Filed on May 13, 1985 by the then Acting 4th Assistant Provincial Fiscal Nepomuceno P. Aparis, the Information indicting appellants alleged:

"That on or about the 14th day of March, 1985, in the Municipality of Javier, Province of Leyte, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating together and mutually helping one another, and armed with deadly weapons, did, then and there willfully, unlawfully and feloniously with intent of gain and by means of violence against person take, steal and carry away personal property in the form of cash money amounting to Five Thousand Pesos, (P5,000.00), Philippine Currency, belonging to Ramon Robin, Sr., to the damage and prejudiced (sic) of the latter in the aforementioned amount; and that by reason and on the same occasion, said accused, with intent to kill and with treachery, did then and there willfully, unlawfully and feloniously attack, assault and hack Ramon Robin, Sr. hitting the latter on the nape and almost severing the neck from the body which caused his death shortly thereafter; hold (sic) and choke (sic) to death Herminia Robin, wife of Ramon Robin, Sr., and likewise choke to death Ramon Robin, Jr., eight years old, Celso Robin, nine years old and Flocerfina Robin, five years old and thereafter, the aforementioned three children of Ramon Robin, Sr., were placed inside a sack and brought and buried along Bito River, Barangay Naliwatan, Javier, Leyte.

ACTS CONTRARY TO LAW."[1]

With Dominador Antojado (Antojado, for short), Domingo Polinga, Alfredo Manto, Precilo Manto and Carlos Carrozo entering negative pleas on June 5, 1985, upon arraignment with the assistance of counsel, trial ensued.

The prosecution presented Dr. Ernesto C. Lajara, municipal health officer of Javier, Leyte, PFC. Diosdado Cerna, member of the Integrated National Police of Javier Police Station, and P/Sgt. Ignacio Rellin, member of INP of Javier Police Station. Rodulfo Redubla was discharged to become a state witness.

For the defense, Deodito Tibes,[2] Carlos Carrozo, Dominador D. Antojado, Hilario Llorada, Pablo Robin and Reynaldo Robin took the witness stand.

Records disclose that Norberto Carrozo @ Borbing was shot dead in the course of arrest; Claver Carrozo @

Claver is at large, and Domingo Polinga @ Doming died of heart attack.

Testified on by the witnesses for the prosecution and summarized by the Solicitor General in the Appellee's Brief, the version of the People runs as follows:

"Rodulfo Redubla (Redubla) is a resident of Sitio Moyongboyong, Bgy. Malitbogay, Javier, Leyte (pp. 2-5, 14-15, TSN, July 8, 1987). He had long known appellants Salvador or Dominador Antojado alias 'Badik', Wilfredo Manto alias 'Alfredo' and/or 'Doydoy', Precilo Manto alias 'Ontoy' and Carlos Carrozo as they had previously worked like him (Redubla) as laborers in Javier, Leyte (pp. 2-5, 14-15, 30-32, TSN, July 8, 1987). However, he did not like them anymore, as they were stealing (p. 4, TSN, *ibid.*). Redubla also knew them because he and appellants were members of the 'Walang Patawad Group' which engaged in robbery (Sworn Statement of Rodulfo Redubla dated March 18, 1985 during the preliminary examination conducted by the Municipal Circuit Trial Judge; pp. 12-13, *rec.*).

In the afternoon of March 14, 1985, Redubla was invited by appellant Salvador Antojado for a drinking spree at the house of Ramon Robin (pp. 4-5, 18-21, TSN, July 8, 1987; p. 3, TSN, November 17, 1987). At first, he declined but at about 9 o'clock in the evening, said appellant passed by Redubla's house and fetched him (pp. 3-4, TSN, Nov. 17, 1987; p. 13, *rec.*).

Ramon Robin, Sr.'s house which is located at Sitio Moyongboyong, Bgy. Malitbogay, Javier, Leyte is more than a kilometer from the house of the appellant Antojado while the house of Redubla is located half way to the house of Ramon Robin, Sr. (pp. 14-16, TSN, July 8, 1987). While Redubla and appellant Dominador Antojado were already proceeding on a side trail towards the house of Ramon Robin Sr., they saw the latter and his wife still on their way home. (pp. 6-7, 19-21, TSN, July 8, 1987).

When Redubla and appellant Antojado arrived at the yard of Ramon Robin Sr., appellant Antojado told Redubla to stay there as he will be ahead in going up the house of Ramon Robin Sr. (pp. 4-5, TSN, July 8, 1987). Redubla noticed that the main door and windows of Ramon Robin Sr.'s house were open (pp. 4-5, 16-17, TSN, July 8, 1987). He also noticed from where he stood that there were children lying down on the sala of the house (pp. 17-18, TSN, *ibid.*). Redubla also noticed that there was a light inside the house (pp. 16-17, TSN, July 8, 1987).

At past 10:00 o'clock in the evening, appellants Wilfredo alias 'Alfredo' Manto; Precilo alias 'Ontoy' Manto and Carlos Carrozo alias 'Dongdong', who arrived at the house before Redubla and appellant Antojado, called Redubla one at a time to make their presence known (pp. 5-7, 18-19, 21-23, TSN, July 8, 1987). At that time, appellants Wilfredo Manto, Precilo Manto and Carlos Carrozo were hiding in the porch of the house near the bedroom (pp. 6-7, 18-19, TSN, July 8, 1987). Accused Norberto Carrozo came out of his hiding near the kitchen and approached Redubla and greeted him saying 'Oh, you are here' to which Redubla replied that he came because he was invited by appellant Antojado (p. 23, TSN, July 8, 1987). Afterwards, accused Norberto Carrozo returned to the back of the house (p. 23, TSN, *ibid.*).

Thereafter, appellants Alfredo Manto, Carlos Carrozo, and Precilo Manto inquired from Redubla where was Ramon Robin Sr. Redubla, having seen the couple earlier, told them that Ramon Robin, Sr. was a little bit behind (pp. 5-6, TSN, July 8, 1987).

A few minutes later, Ramon Robin Sr. arrived carrying a lighted torch followed by his wife Herminia (pp. 7-8, 24-25, TSN, July 8, 1987; pp. 8-9, TSN, Nov. 17, 1987). As they were about to enter through the kitchen door, accused Norberto Carrozo, who was then staying behind the door, attacked Ramon Robin Sr. with his bolo. However, the bolo got embedded on the door jamb and Ramon Robin Sr. ran away from him towards the front door where appellant Antojado was posted (pp. 25-26, TSN, Nov. 17, 1987). Thereupon, appellant Antojado hacked Ramon Robin Sr. with a bolo hitting him on the nape and causing Ramon Robin Sr. to fall down still shouting for help (pp. 7, 25-26, TSN, July 8, 1987; pp. 13-14, TSN, Nov. 17, 1987). When Herminia saw what happened to her husband, she began shouting for help but accused Norberto Carrozo covered her mouth to

stifle her shouts for help and started choking her (pp. 7-8, TSN, July 8, 1987). Consequently, Herminia Robin pleaded to appellant Antojado not to kill her telling him 'when (sic) you are going to kill me, I have still money amounting to P3,000.00' (pp. 7-8, TSN, July 1987; pp. 14-15, TSN, Nov. 17, 1987). Notwithstanding her pleas and giving of the money, appellant Antojado persisted in choking her with a rope used in tying a carabao and as she was gasping for breath, he placed a piece of cloth inside her mouth (pp. 7-8, TSN, July 8, 1987; pp. 14-17, TSN, November 17, 1987). At that moment, Herminia's young daughter, later identified to be 'Floerfina Robin', awakened and began asking her mother for food. She eventually noticed the presence of appellant Antojado and remarked 'you are here Mano Badik' (p. 8, TSN, July 8, 1987; pp. 24-25, TSN, November 17, 1987). Thereupon, appellant Antojado struck her with a bolo causing her to fall down (p. 8, TSN, July 8, 1987). Accused Norberto Carrozo likewise stated: 'If we do not place this little child inside the sack, she will betray us' (pp. 8-9, TSN, July 8, 1987). He then asked for his companions' help to place the children inside the sack (pp. 17-18, TSN, Nov. 17, 1987). Thereafter, appellants Wilfredo and Precilo Manto and Carlos Carrozo went up the house and put the little girl inside the sack (pp. 7-8, TSN, July 8, 1987). Domingo Polinga, Alfredo Manto and Precilo Manto struck the little girl's siblings (later identified to be Ramon Robin Jr. and Celso Robin) and brought them inside the house and similarly placed them inside the sack (pp. 8-9, TSN, July 8, 1987; pp. 21-22, TSN, Nov. 17, 1987).

Reynaldo Robin, a neighbor and relative of Ramon Robin Sr., who had seen the incident from a distance of about five (5) meters likewise heard Norberto Carrozo order his companions to search the house for money (pp. 2-5, TSN, March 7, 1991).

After the three (3) children of Ramon Robin Sr. and his wife Herminia were placed inside a sack, accused Norberto Carrozo ordered his companions to load the bodies of Ramon Robin Sr. and Herminia Robin on a sled (pp. 7-9, TSN, July 8, 1987). Afterwards, accused Domingo Polinga and Claver Carrozo also went up the house to gather the dead bodies of Ramon Robin, Sr. and Herminia Robin as well as the sack where their three (3) children were placed for loading in a sled which was hitched to a carabao (pp. 8-9, TSN, July 8, 1987). Redubla stood watching the proceeding feeling helpless to do anything for fear that he could become another victim (pp. 27-28, TSN, July 8, 1987). xxx

xxx xxx xxx

Subsequently, Pat. Cayunda accompanied Redubla to the house of his colleague PFC Diosdado Cerna, a relative of Herminia Robin, at the poblacion of Javier, Leyte (pp. 25-26, TSN, Nov. 17, 1987). PFC Diosdado Cerna then received the report of Redubla about the robbing and killing of Ramon Robin Sr. and his wife and three (3) children at about 10:30 in the evening of March 14, 1985 by accused Norberto Carrozo, Domingo Polinga and appellants Dominador Antojado, Precilo Manto, Wilfredo Manto and Carlos Carrozo (p. 26, TSN, Nov. 17, 1987; pp. 3-5, TSN, April 22, 1988). Afterwards, Pat. Jovencio Cayunda and Pfc. Diosdado Cerna, together with Redubla, proceeded to the police station in the municipal building of Javier, Leyte for further investigation and to inform the chief of the Javier INP about the reported crime (p. 26, TSN, Nov. 17, 1987).

In the morning of March 15, 1985, P/Sgt. Ignacio Rellin, Chief of the Javier INP, received information on the killing and robbing of Ramon Robin Sr. and his family (pp. 4-5, TSN, April 22, 1988). Thereupon, he ordered PFC Cerna and his companions to follow up the case (pp. 5-6, TSN, April 22, 1988).

At about 8:30 in the morning, the Javier police station received further information from one Mrs. Marticio, Bgy. Capt. of Bgy. Naliwatan, Javier, Leyte that dead persons were found buried in the banks of the Bito River at the outskirts of Bgy. Naliwatan and a carabao was tied near the place where the bodies were buried (pp. 2-3, TSN, Oct. 7, 1988).

Accordingly, the group of PFC Diosdado Cerna, PFC Juan Papalid, Pat. Albino Dagohoy and Pat. Arturo Lazarte, accompanied by Mario Marticio, proceeded to the outskirts of Bgy. Naliwatan, Javier, Leyte to verify the report on the discovered bodies (pp. 6-7, 21-22, TSN, April 22, 1988). There, Marticio led them to the riverbank where the bodies of Ramon Robin Sr. and his wife Herminia and three (3) children were buried (pp.

13-14, 16, TSN, April 22, 1988). They dug up the bodies and found Ramon Robin Sr. and his family members buried in only one place (pp. 9-14, TSN, April 14, 1988).

Afterwards, the bodies of Ramon Robin Sr., his wife Herminia, his children Flocerfina, Ramon Robin Jr. and Celso Robin were loaded on a sled and brought to the municipal building by Pablo Robin and Nilo Robin, Ramon Robin Sr.'s surviving sons, Pablo Novio and Deodito Teves for post-mortem examination (pp. 9-12, TSN, April 22, 1988; pp. 14-15, TSN, May 25, 1989).

Immediately thereafter, the group of PFC Cerna, PFC Juan Papalid, Pat. Albino Dagohoy and Pat. Arturo Lazarte proceeded towards the house of Ramon Robin Sr. at Sitio Moyongboyong, Bgy. Malitbogay, Javier, Leyte to conduct further investigation. When they arrived there, they noticed blood stains and sled tracks from the riverbanks which led to the house and yard (pp. 14-16, TSN, April 22, 1988). They also found bloodstains in the porch and in the yard (pp. 6-7, 13-18, TSN, April 22, 1988).

Based on the report of Redubla that the victims were killed by accused Norberto Carrozo alias Norbing, Salvador Antojado alias Badic, Domingo Polinga @ Doming, Wilfredo Manto @ Doydoy, Carlos Carrozo @ Dongdong, Precilo Manto @ Ontoy and Claver Carrozo @ Claver, P/Sgt. Rellin directed his subordinates to apprehend the suspects but they were unable to get them (pp. 4-6, TSN, Oct. 7, 1988; pp. 11, 23, TSN, April 22, 1988).

On the same date, Dr. Ernesto Lajara, Municipal Health Officer of Javier, Leyte conducted a post mortem (sic) examination on the bodies of Ramon Robin Sr. and his wife. xxx "

Dr. Ernesto Lajara, who conducted post-mortem examination on the bodies of the victims, submitted the following findings:

"Post Mortem Examination Report"

RAMON ROBIN, SR.

Findings

1. Hack wound at the nape almost severing his neck.

CAUSE OF DEATH: Hemorrhage[3]

HERMINIA CERNA ROBIN

"Post Mortem Examination Report"

FINDINGS

1. Ligature mark around the neck.
2. Face swollen and ashen gray.
3. Lacerated wound at the right mastoid area.

Measurement:

Length -3 cm.

Width - 1 cm.

Depth - bone deep.

4. Incise wound at the left hand, between the left index finger and the left thumb.

5. Incise wound at the right deltoid area.

Measurement:

Length 2 cm.

Width 1 cm.

Depth- subcutaneous

CAUSE OF DEATH: ASPHYXIA[4]

Dr. Ernesto Lajara also examined the cadavers of Celso Robin,[5] Ramon Robin, Jr.,[6] and Flocerfina Robin,[7]

but did not find and report the definite cause of their death. He suggested to the Chief of Police that the matter be referred to the NBI or PC and just noted that there were wounds on the body of Flocerfina Robin.

Appellants placed reliance on the defense of denial and alibi. Appellant Antojado, who was represented by his own counsel, apart from the other appellants, theorized that:

"On March 14, 1985, Accused-Appellant Dominador Antojado threw a small party for some of his friends at his house situated at Poblacion, Javier, Leyte. It was the 6th birthday of his daughter, Sheila Antojado. In attendance during that occasion were Pablo Robin, Nilo Robin, Diodito Teves, Pablo Novio and Glicerio[8] Castro. After the visitors partook of the food prepared by herein accused- appellant, the latter brought out a gallon of tuba for all of them to drink. The drinking spree started at around 4:00 in the afternoon.

The first gallon of tuba was consumed at around 6:00 in the afternoon. Thereafter, accused-appellant asked Glicerio Castro to buy another gallon of tuba. When the second gallon of tuba came, the drinking buddies went to consume the same until around midnight. By this time, brothers Nilo and Pablo Robin were already tipsy and sleepy, for which reason they asked permission from accused-appellant Dominador Antojado for them to sleep in the latter's house. Accused-appellant acceded and thereafter immediately prepared a mat for the Robin brothers to sleep on. Meanwhile, the rest of the group including accused-appellant Antojado continued to drink another gallon of tuba. When the third gallon was finally consumed, all of them slept in the accused-appellant's house.

In the same night of March 14, 1985 at around 10:00 in the evening, while accused-appellant Antojado and his friends were having a drink, several armed men allegedly robbed the spouses Ramon Robin, Sr. and Herminia Robin of their money amounting to P5,000.00 and on the occasion thereof, the spouses including their three children, Ramon Jr., Celso and Flocerfina were killed inside their house situated at Sitio Mayong-boyong, Bgy. Malitbogay, Javier, Leyte, more or less one kilometer away from the house of accused-appellant Antojado. The dead bodies of the victims were found buried in the bank of the Bito River in the morning of March 15, 1985."

For appellants Alfredo Manto, Precilo Manto, and Carlos Carrozo:

"Deodito Teves, 29 years old, testified that he knew accused Dominador Antojado since the father of the latter is the owner of the land where they reside.

On March 14, 1985, he was at the house of Dominador (Salvador) Antojado at Zone 2, Javier, Leyte, together with Nilo Robin, Pablo Robin and Pablo Nobio. Nilo and Pablo, are brothers and children of Ramon Robin, the victim. The two were at his house when Dominador invited him and they went along with him. On the way to the house of accused Dominador, Pablo Nobio was on the road he too went along with him. It was 4:00 p.m. when they arrived at Dominador's house. Iglecario Castro and family were also there. After eating, accused Dominador offered a gallon of tuba. All six of them drank the tuba at the kitchen. Consuming the given tuba, another gallon of tuba was bought and they drank it all again. Thereafter Pablo and Nilo Robin felt sleepy. With the permission of Dominador, the two slept at the sala of the house of Dominador. They continued to drink the third gallon of tuba until 4:00 in the early morning of March 15, 1985. Castro went home, accused Dominador, Pablo Nobio and he went to sleep. At 9:00 in the morning, Dominador woke him up, asked him to go with Nilo Robin because the mother of the latter was killed. Dominador (Salvador) Antojado, Nilo Robin, Pablo Robin, Pablo Nobio and he went to the house of the Robin. They saw blood stains inside the house but the bodies of the victims were not there. Searching, they found the bodies at Bito River, one (1) kilometer from the house of the Robin.

On cross-examination, he admitted that Domingo Polinga, Precilo Manto, Carlos Carrozo, Norberto Carrozo are intimate friends of Dominador Antojado Pablo and Nilo Robin are his friends. On March 14, 1985, Dominador Antojado did not leave them in their drinking spree. It was also the said accused who told the group that the family of Ramon Robin with his wife and their children were killed. (TSN, Jan. 26, 1989, pp. 2-29)

Carlos Carrozo, 20 years old, testified that Norberto Carrozo is his uncle. He had been staying with his uncle for six months.

On March 14, 1985, about 6:00 his uncle Norberto together with Rodolfo Redubla, Rodrigo Antojado, Jerry Arcon and Junior Arcon left the house. They brought with them two empty sacks and moved towards Brgy. Malitbogay. At about 2:00 a.m. the following day, all returned home. He heard them conversing about dead bodies, covered with sand and well-hidden. He heard the name Ramon Robin and Herminia Robin.

On cross-examination, he testified that the persons he previously named were at the house of his uncle before 6:00 p.m. of November 14. He heard them planned (sic) to rob the victim spouses, but he did not inform the police authorities of said plan. The following morning, his uncle and he left the house and fled to the forest of Manlilisid and Malitbogay. (TSN, March 9, 1989, pp. 2-23)

Dominador Antojado, 38 years old, testified that he knew his co-accused Norberto Carrozo, Claver Carrozo, Domingo Polinga, Wilfredo Manto, Ontoy or Precilo Manto and Carlos Carrozo. He came to know them in jail. He did not know Rodolfo Redubla.

On March 14, 1985, it was the 6th birthday of his daughter Sheila. Boy Teves, Nilo Robin, Pablo Robin, Pablo Nobio and Iglecerio Castro were at his house. After they ate, he offered them one gallon of tuba. At 6:00 P.M. (sic) he got another gallon of tuba which they drank until 12:00 (sic) midnight. Quite drunk (sic), Pablo and Nilo, both Robin, asked him if they could sleep. He placed a mat in the sala and the two slept. They continued drinking the third gallon of tuba until 4:00 a.m. of the following morning. Thereafter, Iglecerio Castro went home, Diodito Teves, Pablo Novio and he slept at his house. Around 9:00 in the morning, his wife Editha woke him up, told him she overheard that the family of Ramon Robin had been killed and the bodies of the victims were brought along the river. With the children of Ramon Robin, Pablo and Nilo Robin, he together with Teves, and Nobio, they left his house and proceeded to the house of the Robin at Brgy. Malibogay. Nilo did not find his parents home. They followed the sled tracks towards Sitio Naluwatan, crossed the river and there they saw the bodies of the five victims. They borrowed sleds and loaded victims bodies thereon and brought them to the municipal building. He helped in making of the coffins and attended the burial of the victims the following day. (TSN, March 10, 1989, pp. 2-15).

Hilario Llorada, 74 years old, testified that on March 10, 1985, he went to the place of Wilfredo and Precilo Manto, invited them to see his lumber. Accepting his invitation, the two arrived at his workplace on March 14, 1985. The two sawed the lumber until 4:00 P.M. (sic) With more lumber to saw, the two stayed at his house. He offered them supper and they drank until 12:00 midnight. The two woke up 5:00 the following day, sharpened their tools, to be ready for the day's work.

On cross-examination, he admitted he offered his room to the two workers to sleep in. He slept outside his room at the sala near the door. (TSN, April 20, 1989, pp. 2-9)

Precilo Manto, 27 years old, testified that Hilario Llozada contracted him and Wilfredo Manto to saw lumber. On March 14, 1985, he and Wilfredo reported for work at Llozada's place. Immediately, they sawed round lumbers. The work was not finished, hence, they stayed at the house of the Llorada. After eating supper, they drank, then slept around midnight."^[9]

On August 24, 1989, the lower court of origin found the evidence for the prosecution enough to convict and on the basis thereof, handed down the judgment appealed from, disposing thus:

"WHEREFORE, the prosecution having proven the guilt of all the accused who faced trial beyond a (sic) reasonable doubt, the said accused - Diminador (sic) alias Salvador Antojado alias 'Badic', Carlos Carrozo alias 'Dongdong', Precilo Manto alias 'Ontoy' and Wilfredo Manto are all found by this Court GUILTY (sic) beyond reasonable doubt of the criminal charge of Robbery in Band with Multiple Homicide, and each of them is sentenced to suffer the penalty of FIVE (5) RECLUSION PERPETUA, to pay the heirs of the victims

Ramon Robin, Sr., Herminia Robin, Ramon Robin, Jr., Celso Robin and Flocerfina Robin the amount of THIRTY THOUSAND (P30,000.00) PESOS for each victim, jointly and severally, without subsidiary imprisonment in case of insolvency and to pay the costs. Accused Claver Carrozo who is at large will face a separate trial when apprehended.[10]

On July 31, 1994, Atty. Custodio Cañete manifested that Norberto Carrozo was shot dead when he resisted arrest.

To buttress his plea for acquittal, appellant Antojado placed reliance on the assignment of errors, that:

"THE TRIAL COURT ERRED IN NOT ACQUITTING ACCUSED-APPELLANT DOMINADOR ANTOJADO ON THE GROUND THAT THE PROSECUTION HAS FAILED TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.

ASSUMING HEREIN ACCUSED-APPELLANT TO BE LIABLE, THE LOWER COURT ERRED IN CONVICTING HIM OF THE CRIME OF ROBBERY IN BAND WITH MULTIPLE HOMICIDE."[11]

On the part of appellants Alfredo (Wilfredo) Manto, Precilo Manto and Carlos Carrozo, they contend that:

"THE TRIAL COURT ERRED IN CONVICTING THE FOUR ACCUSED OF THE CRIME CHARGED BEYOND REASONABLE DOUBT."

Appellant Antojado theorized that the prosecution failed to prove the presence and identity of the accused as it simply relied on the testimonies of its witnesses which according to him, are inconsistent, rehearsed and fabricated. This appellant faults the trial court for giving credence to the aforesaid testimonial evidence for the People and for disregarding his defense of alibi.

He [Antojado] also pointed out that state witnesses Rodolfo Redubla and Reynaldo Robin testified that the incident occurred at past 10:00 o'clock in the evening of March 14, 1985. On the other hand, defense witness Deodito Teves and rebuttal witness Pablo Robin declared that at such time, he (Antojado) was drinking tuba with them. So also, the distance between his (Antojado's) house and the victims was about one (1) kilometer which could be negotiated by hiking in thirty (30) minutes. Since he (Antojado) was still in his house when the incident happened, he could not be found guilty thereof; reasoned out this appellant who contended further that with his alibi having been corroborated by two disinterested witnesses, the same should not have been disregarded by the lower court a quo. The trial court's finding that he lured the elder Robin brothers (Nilo and Pablo) to ensure the commission of the crime is mere speculation; appellant Antojado argued.

Assuming arguing that he was guilty of the crime charged, Antojado claims that he should be sentenced to only one reclusion perpetua because the trial court erred in convicting him of the crime of Robbery in Band with Multiple Homicide. He avers that there is no such crime in the penal laws. Article 294, par. 1 of the Revised Penal Code provides that any person guilty of robbery with the use of violence against or intimidation of person shall suffer the penalty of reclusion perpetua to death when by reason or on occasion of the robbery, the crime of homicide shall have been committed. Homicide is used in its generic sense and includes robbery with murder. Robbery with homicide is the same crime regardless of the number of persons killed. So also, the trial court also erred in finding him guilty of robbery in band with multiple homicide. Band is a generic aggravating circumstance in robbery and does not qualify the offense.

The Public Attorney's Office, in representing the other appellants, asseverates that prosecution witness Redubla could not have seen the herein appellants. The scene of the crime was lighted only upon the arrival of the spouses Ramon Robin, Sr. and Herminia Robin. It was Norberto Carrozo who actually delivered the first blow on Ramon Robin, Sr. Thereafter, Domingo Polinga wrestled the torch from Herminia Robin. Then, there was total darkness in the place. The four remaining appellants were not positively identified by the two (2) state witnesses. Rather,

their identification was shrouded with serious doubt and falls short of positiveness and reliability essential for conviction. In fact, during cross-examination, prosecution witness Redubla, who was hiding at the back of the house, referred to the appellants collectively. He failed to describe the specific acts committed by the three (3) appellants. To repeat, this was because the surrounding was dark.

Appellants Carlos Carrozo, Wilfredo Manto and Precilo Manto further placed reliance on alibi and denial, alleging that they were nowhere at the place when the crime occurred.

Are appellants guilty of the crime charged?

After careful consideration of the evidence, the Court finds the appeal devoid of merit.

Appellants assail the credibility of the prosecution witnesses branding their testimonies as inconsistent, rehearsed and fabricated.

The argument does not persuade. This argument involves an assessment of the credibility of the witnesses. "xxx One of the highly revered dicta Philippine jurisprudence has established is that this Court will not interfere with the judgment of the trial court in passing upon the credibility of opposing witnesses, unless there appears in the record some facts or circumstances of weight and influence which have been overlooked and, if considered, would affect the result. This is founded on practical and empirical considerations, i. e., the trial judge is in a better position to decide the question of credibility, since he personally heard the witnesses and observed their deportment and manner of testifying. He had before him the essential aids to determine whether a witness was telling the truth or lying. Truth does not always stalk boldly forth naked; she often hides in nooks and crannies visible only to the mind's eye of the judge who tried the case. To him appears the furtive glance, the blush of conscious shame, the hesitation, the sincere or flippant or sneering tone, the heat, the calmness, the yawn, the sign, the candor or lack of it, the scant or full realization of the solemnity of an oath, the carriage and mien. On the other hand, an appellate court has only the cold record, which generally does not reveal the thin line between fact and prevarication that is crucial in determining innocence or guilt." [12]

The trial court found Redubla's testimony credible, having testified in a clear, concise and straight forward manner. He stated that appellant Antojado passed by his (Redubla) house and invited him to a drinking spree in the house of the victim Ramon Robin. When they reached the Robin house, Antojado went upstairs and the other appellants asked him (Redubla) where the spouses Robin were. These appellants were in the yard. Redubla then narrated how first Norberto Carrozo and then appellant Antojado hacked Ramon Robin. Antojado choked Herminia Robin. The Robins' daughter was likewise hacked to death by Antojado. Norberto Carrozo then instructed the other appellants to place the children in the sacks. The corpses were put on the sleigh and dumped by the river.

The actions of appellants show that they conspired to rob and kill the spouses Robin. There can be no other conclusion that can be deduced from the foregoing circumstances. Conspiracy need not be proved by direct evidence, and proof of previous agreement to commit the crime is not essential to establish conspiracy. It may be inferred from the acts of the perpetrators, whose conduct before, during and after the commission of the crime, can show its existence. [13] For conspiracy to exist, it is not required that there be an agreement for an appreciable period prior to the occurrence, it is sufficient that at the time of the commission of the offense, the malefactors had the same purpose and were united in its execution. [14]

For alibi to prosper, they who raise it must establish their presence at another place during the commission of the offense and prove the physical impossibility of being at the scene of the crime. [15] Appellants have failed to show physical impossibility of their presence at the crime scene. On the contrary, the state witnesses identified the

appellants, seeing them at the scene of the crime at the time of its commission. Such positive identification prevails over denials and alibis.[16] In the rebuttal, Pablo Robin, one of the sons of the deceased Ramon Robin Sr., testified:

"Q.

Now, what is the purpose of Dominador Antojado in coming to your house?

A.

He invited us to a drinking spree.

xxx xxx xxx

Q.

Was that the first time you were invited by Dominador Antojado that day and time?

A.

Yes, sir.

xxx xxx xxx

Q.

What time was that when your group started to sleep?

A.

Ten thirty.

xxx xxx xxx

Q.

By the way, were you able to see the dead body of your parents and members of your family?

A.

I was able to see because it was pointed out to me by Dominador Antojado.

Q.

By the way, who led your group in going to the place where you have seen the dead body of your parents and members of your family?

A.

Dominador Antojado.

Q.

Now, during the presentation of defense evidence, Dominador Antojado testified before this Honorable Court that it was Pablo Novio who invited you to their house on that drinking spree, now, what can you say about his statement?

A.

He personally (sic) together with his brother went personally to us to invite us to a drinking spree.

Q.

Dominador Antojado further testified in Court that you together with him went to the family house of the Robin's and thereafter looked to the place, where you suspected a sled..... the mark of a led (sic) near your house and followed the same and it was only then (sic) you and your group were able to trace up (sic) the graveyard of those ... of the members of your family and your parents, what can you say about that statement of Dominador Antojado?

A.

He was the one who pointed to us where the body of our parents were buried.

Q.

Did your group try to follow the markings of the sled near your house?

A.

We followed the traces of the sled and when we reached near the Bito River, he was the one who pointed to us where they were buried." [17]

When homicide is committed as a consequence of or on the occasion of robbery, all those who took part as principals in the robbery will also be held guilty as principals of the special complex crime of robbery with homicide although they did not actually take part in the homicide, unless it clearly appears that they endeavored to prevent the homicide.[18]

Both counsel de oficio and the Office of the Solicitor General rightly theorized that the crime committed by the appellants is a special complex crime of ROBBERY WITH HOMICIDE under Article 294 of the Revised Penal Code.[19] The trial court erred in convicting them of the crime of Robbery in Band with Multiple Homicide. There is no such crime in the Revised Penal Code and in the statutes.

Robo con Homicido is killing of a human being for the purpose of robbery. Homicide is used in Article 294 in a generic sense.[20] Under the aforecited statutory provision, the term "homicide" comprehends murder, double homicide and multiple homicide while band is considered as a mere generic aggravating circumstance. The offense is nonetheless complex by reason of the fact that multiple homicide or murder is committed. The crime of robbery with homicide remains fundamentally the same regardless of the persons killed in connection with robbery. It is primarily a crime against property and the killing is a mere incident of robbery.

Well-founded and meritorious is the argument of the counsel de oficio and the OSG that People v. Amania,[21] if not identical, is similar to the case at bar. The Court ruled:

"xxx Time and again, this Court has held that there is no crime of robbery with double homicide. The term 'homicide' in paragraph 1, Article 294 of the Revised Penal Code is to be understood in its generic sense. The juridical concept of the special complex crime of robbery with homicide does not limit the taking of human life to one single victim. In this special complex crime, the homicides or murders and the physical injuries, irrespective of their number committed on the occasion or by reason of the robbery are merged in the single composite crime of robbery with homicide. Therefore the crime in this case should have been properly denominated as robbery with homicide." (Emphasis, ours)

The penalty prescribed for the crime of robbery with homicide is reclusion perpetua to death. Absent any mitigating or aggravating circumstance, the lesser penalty is imposable.

WHEREFORE, the appealed decision is AFFIRMED with the MODIFICATION that the offense committed is Robbery with Homicide and pursuant to Article 294 of the Revised Penal Code, appellants are sentenced to a

single indivisible penalty of RECLUSION PERPETUA.

The lower court of origin is hereby ordered to conduct with dispatch separate trial of Claver Carrozo,[22] who was at large during the trial and later apprehended. Proportionate costs against the appellants.

SO ORDERED.

Melo, (Chairman), Vitug, Panganiban, and Gonzaga-Reyes, JJ., concur.

[*] Was shot to death while in the process of being arrested.

[**] Also referred to as Salvador in records.

[***] Died of heart attack during the pendency of the trial.

[****] Was discharged from the Information of this case to be utilized as a state witness.

[1] Rollo, pp. 13-14.

[2] Sometimes referred to as Deodito Teves in the Appellants' Brief.

[3] Exhibit "A", p. 11.

[4] Exhibit "C", p. 56.

[5] Exhibit "F", TSN, February 16, 1993, pp. 4-5.

[6] Exhibit "G", TSN, December 16, 1993, pp. 4-5.

[7] Exhibit "H", TSN, February 16, 1993, p.5.

[8] Sometimes referred to as Iglecerio in the transcript of stenographic notes.

[9] Appellants' Brief of Alfredo Manto, Precilo Manto and Carlos Carrozo, pp. 228-232.

[10] Penned by Judge Josephine K. Bayona on August 24, 1989 in Criminal Case No. 446, Branch 10, Eighth Judicial Region, Abuyog, Leyte.

[11] Appellant's Brief, pp. 7 - 9, Rollo, pp. 134 - 135.

[12] People of the Philippines vs. Eduardo Agbayani y Mendoza, 284 SCRA 315, 338-339.

[13] People v. Leangsiri, 252 SCRA 213.

[14] People v. Hubilla, Jr., 252 SCRA 471.

[15] People vs. Ballabare, 264 SCRA 350 [1996]).

[16] People of the Philippines vs. Felipe Ballesteros, et al., 285 SCRA 438, 446.

[17] TSN, May 25, 1989, pp. 5-6, 8, 10-11, Direct Examination of Pablo Robin.

[18] People v. Silan, 254 SCRA 491).

[19] Article 294. Robbery with violence against or intimidation of persons- penalties - Any person guilty of robbery with the use of violence against or intimidation of any person shall suffer:

1. The penalty of reclusion perpetua to death, when by reason or on occasion of the robbery, the crime of

homicide shall have been committed.

[20] *People vs. Feliciano*, 256 SCRA 706.

[21] 220 SCRA 347, 353.

[22] Currently detained at Abuyog, Sub-Provincial Jail, Abuyog, Leyte.

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