

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ERNESTO MENDOZA, JOHN DOE AND PETER DOE,
ACCUSED-APPELLANTS.**

G.R. No. 97931. June 03, 1993

Ponente: MELO, J.

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MELO, J.:

Accused-appellant, together with two unidentified Does, was charged on June 22, 1989 in Criminal Case No. 89-06-286 of Branch VI of the Regional Trial Court of the Eighth Judicial Region stationed in Palo, Leyte, with the crime of Robbery with Homicide in an information which pertinently reads:

That on or about the 21st day of May, 1989, in the Municipality of Palo, Province of Leyte, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping one another with intent to gain, by means of force, violence and intimidation with the use of deadly weapons which the accused had provided themselves for the purpose, did then and there wilfully, unlawfully and feloniously take, rob and carry away P5,000.00, belonging to Juliana Triste, against her will and consent, and to her damage and prejudice; that by reason of and on the occasion of the above-robbery, the above-named accused, with intent to kill, did then and there wilfully, unlawfully and feloniously attack, assault, stab and wound one Juliana Triste with deadly weapons which the accused had provided themselves for the purpose, thereby inflicting wounds on the different parts of her body which directly caused her death.

Contrary to law. (p. 7, Rollo.)

The evidence for the prosecution discloses that at about 8 o'clock on the evening of May 21, 1989, at Barangay Camaysihay, Palo, Leyte, Edgar Triste and Renato Centino were inside the elevated, non-concrete house owned by the victim, Juliana Triste. The latter meanwhile, who had just taken her supper, was on her way to her other house made of concrete, about twenty meters away, preparing to retire for the night (t.s.n., 4/2/90, pp. 6, 17-19, 23). Suddenly, Edgar Triste and Centino heard the victim shouting for help. They immediately proceeded downstairs and hid behind a banana plant to see what was going on. From a distance of approximately six meters, Edgar Triste saw accused-appellant, Ernesto Mendoza, with the help of his two companions, take the victim's money belt ("tagkong"), in the process also stabbing the victim several times. Accused-appellant and his companions then ran away (id., pp. 27, 6--8). Edgar Triste was able to see all that happened because there was an electric light only about two meters from the spot where the victim was robbed and stabbed (id., pp. 26-28). Edgar Triste was also able to recognize accused-appellant because they knew each other, having played pool with each other and having previously worked together for the victim (id., p. 5).

After the assailants fled, Edgar Triste and Centino rushed to the victim who was lying on the ground, face down (id., p. 8). They brought her inside the house and washed her body, as she was already dead (id., p. 10). The victim was later autopsied, and the post mortem examination report (Exh. D) shows that she sustained thirteen wounds. On May 24, 1989, Edgar Triste gave a sworn statement to the police authorities (Exh. C) about the incident he witnessed.

Accused-appellant denied the charge and claimed that on the date of the incident, he was in the house of his uncle, Juan Mendoza, in Palo, Leyte; that he had been there since May 18, 1989 due to the request of his uncle for assistance in preparing for the celebration of the death anniversary of his uncle's son; that he was sent on an errand to Barangay Patong, Dagami, Leyte to buy firewood at about 10 A.M., returning to Palo, Leyte with the firewood which he unloaded on his uncle's house at 5 P.M.; that after taking dinner, they had a drinking spree of tuba and he then went to sleep; and that he woke up the following morning at about 5 o'clock and did not leave the place of his uncle.

After due hearing, the Honorable Getulio M. Fernandez rendered a decision convicting accused-appellant of the crime charged, the dispositive portion of which reads:

WHEREFORE, finding accused Ernesto Mendoza guilty beyond reasonable doubt as principal of the crime of Robbery with Homicide, defined and penalized under paragraph 1, Art. 294 of the Revised Penal Code, [the court] sentences said accused Ernesto Mendoza to the penalty of reclusion perpetua and to indemnify the heirs of the victim Juliana Triste the amount of Thirty Thousand (P30,000.00) pesos without subsidiary imprisonment in case of insolvency.

SO ORDERED. (pp. 22-23, Rollo.)

Accused-appellant is now before this Court praying for the reversal of the lower court's decision, contending that the trial court erred (1) in giving weight and credence to the testimony of the prosecution witnesses and in disregarding the theory of the defense; and (2) in finding him guilty despite the insufficiency of evidence.

The appeal is devoid of merit.

The Court has consistently deferred to the findings of the trial judge who is given the rare opportunity of observing first-hand the demeanor and deportment of the witnesses so as to determine the credibility of their testimony (*People vs. Eligino*, G.R. No. 70113-14, December 11, 1992, citing *People vs. Anciano*, 189 SCRA 519 [1990]; *People vs. Bernardo*, 186 SCRA 876 [1990]). As an appellate tribunal, this Court has none of the advantages of the trial judge's position, relying, as it does, only on the cold records of the case and on the judge's discretion (*People vs. Eligino*, *supra*, citing *People vs. Sanchez*, 192 SCRA 649 [1990]). In the absence of a showing that the factual findings of the trial judge were reached arbitrarily or without sufficient basis, these findings are to be received with respect by, and indeed are binding on, this Court (*People vs. Alban*, G.R. No. 97431, September 28, 1992).

The fact that the witness Edgar Triste is related to the victim does not disqualify him from testifying nor does it render his testimony utterly devoid of belief, in the absence of any improper motive actuating him to testify falsely against the accused (*People vs. Abejuela*, 92 SCRA 503 [1979]).

The failure of Edgar Triste to reveal at once the identity of accused-appellant as one of the perpetrators of the crime, does not affect, much less, impair his credibility as a witness (*People vs. Ramon Flores and Renato Macabiog*, G.R. No. 98069, January 27, 1993 citing *People vs. de Guzman*, 194 SCRA 618 [1991]; *People vs. Valdez*, 159 SCRA 152 [1988]). Such delay was simply due to his natural reaction of being afraid and wary, soon after witnessing a startling occurrence. Being known to accused-appellant, Edgar Triste must have feared the former's swift retaliation if he should incriminate him. Thus, during the early moments after the commission of the crime, it was neither irregular nor abnormal for eyewitness Edgardo Triste to have thought more about his personal welfare and security by not coming out in the open as witness. His mere relationship with the victim is not a justification for throwing aside his testimony (*People vs. Cuadra*, 85 SCRA 576 [1978]).

His failure to warn or extend succor to the victim does not also, in any way, affect his credibility as a witness. In

fact, he adequately explained why he did not warn the victim beforehand:

ATTY. HUÑAMAYOR:

Q. You said you saw Ernesto Mendoza with two other companions. When for the first time you saw him that night where was Ernesto Mendoza and his companions located?

E. TRISTE:

A. They were behind the house where there were gabi plants.

Q. And you were situated where?

A. We were about to go up our house which is not made of concrete materials.

Q. Where did you come from?

A. I had just deficated and so I was about to go back to the house.

Q. And with you was Renato Centino?

A. Yes.

Q. What was Ernesto Mendoza doing at the back of the house in the gabi plants?

A. They were laying-in-wait.

Q. When you saw them where was Juliana Triste at that time?

A. She was going towards the door.

Q. And, of course, you saw this Ernesto Mendoza with his companions lying-in-wait? Were they armed?

A. Yes, sir.

x x x x x x x x

Q. Since you saw them lying-in-wait for your aunt, you just proceeded upstairs?

A. Yes, sir. I did not yet know they were about to kill her.

Q. You did not call your aunt to warn her that there were people lying?in-wait at the gabi plants?

A. I did not because I did not know what they were about to do.

x x x x x x x x

COURT:

Q. When you saw Ernesto Mendoza with his companions who were lying-in-wait with arms, did you not suspect that they had the intention to rob Juliana Triste?

A. I did not know that they intended to rob Inay Joya.

(t.s.n., 4/2/90, pp. 21-23, 31.)

In a similar straight-forward manner, Edgar Triste testified that during the robbery, he did not shout at accused-appellant for him to desist from what he was doing because he feared that "they (attackers) might stab me instead". (TSN, 4/2/90, p. 31.)

Accused-appellant denies the charge and claims alibi as a defense. The defense of alibi, as a rule, is considered with suspicion and is always received with caution, not only because it is inherently weak and unreliable but also because it is easily fabricated and concocted (*People vs. Sagadsad, et al.*, G.R. No. 88042, November 13, 1992). In order for such defense to prosper, it is not enough for the accused to prove that he was somewhere else when the crime was committed, but it must likewise be demonstrated that it was physically impossible for him to have been at the place where the crime was committed. No evidence was presented by accused-appellant to prove that it was impossible for him to have been at the scene of the crime at the time of its occurrence. Withal, the alibi of accused-appellant must undoubtedly fall considering that he was positively identified by prosecution witness Edgar Triste, an old acquaintance, who was only about 11 feet from the incident. Accused-appellant even failed to establish or prove any ulterior motive why Edgar Triste would falsely implicate him in the crime. In fact, accused-appellant admitted that he and Edgar Triste were close friends. Moreover, greater weight is given to the positive testimony of the prosecution witnesses than to denials of the accused (*People vs. de Jesus*, 145 SCRA 521 [1986]).

Accused-appellant contends that his conviction is contrary to law and jurisprudence for it is merely based on the uncorroborated, unreliable, and incredible testimony of the lone prosecution eyewitness. He further argues that the two other companions of Edgar Triste who had also witnessed the incident should have also been presented during the proceeding.

The matter of presenting witnesses for the People is the prerogative of the prosecution (*People vs. Lopez*, G.R. No. 102381, September 29, 1992 citing *People vs. Andiza*, 164 SCRA 642 [1988]; *People vs. Solomon*, 166 SCRA 767 [1988]). In the case at bar, the prosecution found it unnecessary to present the other eyewitnesses probably because, in its appreciation, there was already sufficient evidence to establish its case. Indeed, the testimony of one witness, if credible and positive is sufficient to convict (*People vs. Gamao*, 22 SCRA 809 [1968]).

Lastly, accused-appellant argues that the crime of robbery with homicide has not been proven because (a) it was not shown that the victim had money in her possession at the time of the incident, and (b) the cause of the victim's death was not established since the medico-legal officer who conducted the autopsy was not presented by the prosecution.

Based on the evidence adduced by the prosecution, robbery was the principal motive of appellant and his companions. Eyewitness Edgar Triste categorically said that appellant and his companions took the victim's money belt ["tagkong"] (TSN, 4/2/90, p. 7).

Likewise, it is undisputed that during the robbery, accused-appellant stabbed the victim several times which caused her instantaneous death. Considering that the victim was killed on the occasion or by reason of the robbery, the crime committed is the special complex crime of robbery with homicide (Art. 294, par. 1 of the Revised Penal Code).

The non-presentation of the medico-legal officer who conducted the autopsy on the victim is not fatal to the prosecution's cause, for his testimony would only be corroborative, clear as it is from the testimony of Edgar Triste that the wounds inflicted by accused-appellant and his companions caused the death of the victim.

WHEREFORE, the appealed decision is hereby **AFFIRMED** except for the indemnity which is increased to P50,000.00 following recent pronouncements of this Court.

SO ORDERED.

Feliciano, (Chairman), Bidin, Davide, Jr., and Romero, JJ., concur.

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