

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELEE, VS. TEODORO ESMAL Y BADION AND JUAN TRESVALLES, JR. Y TROPE, ACCUSED, JUAN TRESVALLES, JR. Y TROPE, ACCUSED-APPELLANT.

G.R. Nos. 102981-82. April 21, 1995

Ponente: PUNO, J.

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PUNO, J.:

Appellant JUAN TROPE TRESVALLES, JR. and accused TEODORO BADION ESMAL pleaded not guilty to charges of Robbery with Homicide made under an Amended Information, dated January 10, 1986 which alleges as follows:

"That on or about the 27[th] day of September, 1985, in the Municipality of Marikina, Metro Manila, Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together with Oscar Camacho and John Doe @ Raul who are all at large and mutually helping and aiding one another, armed with a handgun and bladed instrument, with intent of gain and by means of force, violence and intimidation, did, then and there willfully, unlawfully and feloniously hold-up a passenger jeep driven by Melencio Abenojar, divest one Leonardo Diwa of his Alba Wristwatch valued at P600.00 and cash money in the amount of P10.00, belonging to said Leonardo Diwa, to the damage and prejudice of the latter in the aforementioned amount of P610.00; that on the occasion of the aforesaid Robbery and in pursuance of their conspiracy, the said accused, with intent to kill, did, then and there willfully, unlawfully and feloniously attack, assault and stab with the said bladed instrument said Leonardo Diwa on the vital parts of his body, thereby inflicting upon him stab wounds which directly caused his death.

"Contrary to law."[1]

Two eyewitnesses — REYNALDO BALBASTRO[2] and ANTONIO SOSA[3] — were presented by the prosecution. They testified that on the evening of September 27, 1985, they were on-board a passenger jeepney headed towards San Mateo. Somewhere along J.P. Rizal Avenue, a hold-up was announced by five of the passengers. One of them, sitting in front next to the driver, grabbed the wheel. His four companions immediately started collecting money and valuables from the passengers.[4]

The commandeered jeepney stopped behind the Marikina Transit terminal. There, Leonardo Diwa fought the hold-uppers and succeeded in stabbing one of them. In the rumble that ensued, one of the criminals stabbed Diwa, who fell off the jeepney. The jeepney was driven to a deserted lot inside one of the subdivisions in Marikina, Metro Manila. The hold-up victims were ordered to alight and the criminals fled using the passenger jeepney.[5]

An autopsy was conducted on the body of the deceased Diwa by Dr. Dario L. Gajardo.[6] He concluded that the "cause of death is cardio-respiratory arrest due to shock and hemorrhage secondary to stab wounds of the body."[7]

At around 7:00 a.m., October 16, 1985, accused Esmale was arrested by the Marikina police. A few hours later,[8] he confessed his participation in the hold-up. He also named as his co-conspirators in the crime a certain Raul,

one Oscar Camacho, and appellant Juan Tresvalles, Jr.[9] On the basis of this confession, appellant was arrested and subsequently charged as principal in the crime of Robbery with Homicide.

The day after accused Esmale's arrest, the police took the sworn statements of deceased Diwa's widow NEMENSIA ADRIANO DIWA,[10] hold-up victim and Diwa's brother-in-law, GERARDO ADRIANO FRANCISCO,[11] and eyewitnesses BALBASTRO[12] and SOSA.[13] According to their respective statements, the deceased's brothers-in-law, Francisco and Balbastro, both picked out accused Esmale from a police line-up.

The defense put up by accused Esmale consisted mainly of denial.[14] He admitted signing the sworn statement where he confessed to the crime and implicated appellant, among others, in its commission. However, Esmale testified that he was tortured by the police and forced by Pat. Jacobo to sign the statement which was typed and prepared by Pat. Jota.[15]

For his part, appellant, who is related to Esmale by affinity,[16] did not only deny any participation in or knowledge of the hold-up and homicide. He likewise offered an alibi to negate his presence at the crime scene on the evening of September 27, 1985. According to him, at the time the hold-up was being perpetrated, he was at the house of retired PC member Lt. Democrito Alibadbad, Jr.,[17] who corroborated his story.[18] It is alleged that from September 26 to 28, 1985, appellant and his brothers Neptali and Cis[19] Tresvalles, repaired the roofings and sidings of Lt. Alibadbad's house. They also elevated the roof of the house and changed its posts.[20] Appellant testified that he went to 2nd West Crame at around 6 a.m., September 26, 1985, and stayed there until September 28, 1985, which was a Saturday.[21]

The trial court[22] found accused Esmale and appellant "guilty beyond reasonable doubt of the crime of Robbery with Homicide" and sentenced them "to suffer (the) penalty of Reclusion Perpetua, to indemnify the heirs of Leonardo Diwa in the sum of P30,000.00, to return to Gerardo Francisco, Reynaldo Balbastro and Antonio Sosa the value of the things stolen (from them) in the amount of P205.00 and to pay the costs." It held, *inter alia*:

"xxx xxx xxx

"Several eyewitnesses to the incident who were the co-passengers of the victim Leonardo Diwa, namely: Gerardo Francisco, Reynaldo Balbastro, Antonio Sosa executed sworn statements before the Marikina Police Station on October 17, 1985 and testified in Court, positively identifying the accused as among the perpetrators of the crime.

"Accused, upon the other hand interposed alibi as defense. xxx The Supreme Court has ruled every now and then that the defense of alibi, one of the weakest defenses oftenly (sic) resorted to by the accused cannot prosper where the accused had been positively identified by prosecution witnesses. xxx

"Moreover, in order that an alibi as a defense may prosper, the evidence to support it must be clear and convincing as to preclude the possibility of the accused's presence at the scene of the crime. In this requirement, the defense has miserably failed to established (sic). As regards the testimony of defense witness Lt. Alibadbad, the same should be received with the utmost caution and should be entitled to lesser weight considering the same may be tainted with bias. Since it was admitted by Lt. Alibadbad in his testimony that the father of the accused is his brother-in-law.

"Prosecution witnesses identification of the accused, this Court believes is accurate. First, the considerable length of time of travel -- from the time the robbers boarded the vehicle up to the time the victims were brought in a certain subdivision -- witnesses had enough opportunity to identify each of the robbers. Second, the incident happened in the early evening of September 27, 1985, 7:30 o'clock in the evening to be exact, when it is not too dark outside. Third, witnesses were in such position wherein they could easily identify the robbers as they were all inside the passenger jeepney, seated just beside and face to face with the robbers. Under the above-mentioned circumstances coupled with the fact that all the testimonies of the prosecution

witnesses were consistent on material points, this Court is inclined to believe prosecution's version of the incident. The defense's bare denial of the accused's participation or culpability thereof deserves scant consideration.

"xxx xxx xxx"

(Citations omitted)[23]

Only Juan Tresvalles, Jr., appealed his conviction. He now contends that the trial court erred:

"I.

XXX IN GIVING CREDENCE TO TESTIMONIES OF PROSECUTION WITNESSES; and

"II.

XXX IN REJECTING ACCUSED JUAN TRESVALLES, JR.'S PLEA OF ALIBI AND IN CONVICTING HIM DESPITE LACK OF CLEAR, POSITIVE AND CONVINCING EVIDENCE TO PROVE HIS GUILT BEYOND REASONABLE DOUBT." [24]

We reverse.

Contrary to the trial court's findings, appellant's identification as one of the five participants in the robbery with homicide charged in the case at bench is doubtful and cannot be the basis of his conviction.

Firstly, the trial court erred in considering the identification of appellant by the deceased's brother-in-law Gerardo Francisco made in a sworn statement, dated October 17, 1985. It is a fact that Francisco never testified in the trial court. Thus, his out-of-court statement identifying appellant is hearsay and has no probative value. As this Court had also ruled in *People v. Lavarias*, 23 SCRA 1301, 1306 (1968):

"May the conviction be sustained by virtue of the affidavits previously executed by the above witnesses wherein appellant was pointed at as one of those who participated in the offense charged? The constitutional right to confrontation[25] precludes reliance on such affidavits. Such a constitutional safeguard cannot be satisfied unless the opportunity is given the accused to test the credibility of any person who, by affidavit or deposition, would impute the commission of an offense to him. It would be to disregard one of the most valuable guarantees of a person accused if solely on the affidavits presented, his guilt could be predicated. xxx"

Secondly, the trial court erred in giving credence to prosecution eyewitness Reynaldo Balbastro who did not positively and convincingly identify appellant as one of the hold-uppers. His wavering testimony is as follows:

"xxx xxx xxx"

"Q-

When you were brought at the back of the garage of Marikina Transit, what did the hold-uppers do to you?

"A-

That was when my brother-in-law (referring to deceased Diwa) took action and stabbed one of the hold-uppers, who is fronting him and that started a commotion.

"Q-

Were you able to identify.... By the way, of your own knowledge, how many people boarded the said vehicle?

"A-

If I'm not mistaken, they were about five (5).

"Q-

Were you able to identify the five (5) of them?

"A-

I happen to know one of them.

"Q-

And were you able to identify his name, that particular hold-upper?

"A-

I came to know his name when he was arrested.

"Q-

So when you were brought at the back of the garage of Marikina transit, your brother-in-law stabbed one of the hold-uppers and a commotion as you said proceeded after the stabbing of your brother-in-law of one of the hold-uppers. What transpired then?

"A-

He fell down from the jeepney.

"Q-

How about you and your other companions, what happened to you?

"A-

My wallet was taken by the hold-upper.

"Q-

Were you able to identify the hold-upper or hold-uppers who took your wallet?

"A-

Yes, sir.

"Q-

If he is in the court room, will you be able to identify him?

"A-

Yes, sir.

"Q-

Could you please point to the said person.

"INTERPRETER:

The person pointed to by the witness identified himself as Teodoro Esmale.

"FISCAL LEGASPI:

"Q-

And what happened then after your wallet was taken from you by this Teodoro Esmale?

"A-

They brought us to another subdivision, sir, at Green Heights.

"Q-

Were you able to identify the companions of Esmale, who brought that jeepney to Green Heights?

"A-

No, sir.

"Q-

Were you also able to identify the other companions of Teodoro Esmale?

"A-

No, sir.

"xxx xxx xxx

"Q-

Was your brother-in-law with you at that time when you were brought to Green Heights?

"A-

No, sir, because he already fell from the jeepney.

"Q-

Why did he fall from the jeepney?

"A-

Because of the stabbing he received.

"Q-

Were you personally present when he was stabbed?

"A-

Yes, sir.

"Q-

Were you able to identify the assailant of your brother-in-law?

"A-

I don't know their names, but I'm sure that the hold-upper stabbed him.

"Q-

Will you please look inside the court room and will you please identify as to the other companions of Esmale.

"A-

There is, sir.

"Q-

Would you please point to him.

"INTERPRETER:

The person pointed to by the witness identified himself as Juan Tresvalles."[26]

(Underscoring supplied.)

On cross-examination, he continued:

"xxx xxx xxx

"Q-

And that upon being informed that one of the suspects was already brought to the station, you proceeded to the police station?

"A-

Yes, sir.

"Q-

And is it not a fact that the police officer there, asked you to identify the person before informing you that he was a suspect in that alleged incident?

"A-

Upon arriving at the criminal investigation unit of the police station, I asked the police officer if they really arrested one of the hold-uppers, and he told me that they did and I was brought to the line-up of several men and there I was able to identify the suspect.

"Q-

And in fact, you only identified one of them in the line-up?

"A-

Yes, sir.

"COURT:

How many persons were in the line-up when you were asked to make the identification?

"WITNESS:

About six (6), sir.

"COURT:

Proceed.

"ATTY. OLIVA:

"XXX XXX XXX

"Q-

Did you see.... In fact, you saw the stabbing of your brother-in-law, is that correct?

"A-

Yes, sir.

"Q-

And in fact, you did not identify him.... You were not able to identify him inside the police station?

"A-

I told him that if I will see him, I will be able to recognize him.

"Q-

That person who allegedly stabbed your brother-in-law was included in that six (6) persons in the line-up?

"A-

I only pointed to the one whom I recognized, sir.

"COURT:

Was the person who stabbed your brother-in-law, the person you saw in the police line-up?

"WITNESS:

The one I identified.

"COURT:

Proceed.

"ATTY. OLIVA:

"Q-

Who was the person you pointed to?

"A-

The one who gave his name as Teodoro- Esmale.

"Q-

So you mean to say, you personally saw this person inside the jeepney who stabbed your brother-in-law?

"FISCAL LEGASPI:

Misleading, your Honor. The witness did not mention that Teodoro Esmale was the one who stabbed the victim, Leonardo Diwa. That was the one whom he pointed to in the line-up.

"COURT:

Witness may answer.

"WITNESS:

"A-

I saw the person stabbed him in the jeepney.

"ATTY. OLIVA:

"Q-

But you could not identify who among them?

"A-

No, sir.

"COURT:

For clarification.

"Q-

You saw the person who stabbed your brother-in-law, is that correct?

"A-

Yes, sir.

"COURT:

"Q-

Can you recognize him?

"A-

No, sir.

"COURT:

Proceed.

"ATTY. OLIVA:

"Q-

Are you sure that you only identified one person in the police station?

"FISCAL LEGASPI:

Already answered.

"COURT:

"Q-

You are sure that you saw the person who stabbed your brother-in-law, is that correct?

"A-

Yes, sir.

"COURT:

"Q-

Did the Court correctly get you that you cannot recognize the person who stabbed your brother-in-law?

"A-

I cannot remember. I would not be able to recognize him because he had his back facing at me.

"COURT:

Is that person who stabbed your brother-in-law in court today?

"A-

I am not sure if they are the one who stabbed my brother-in-law.

"xxx xxx xxx"[27]

(Underscoring supplied.)

Thirdly, it was only eyewitness Antonio Sosa who identified appellant in his testimony, thus:

"xxx xxx xxx"

"Q-

Do you know the name of the person who took your articles?

"A-

Yes, sir.

"Q-

Please tell the Court.

"A-

Teodoro Esmale and Juan Tresvalles (Witness pointing).

"xxx xxx xxx"

"Q-

So you saw the persons whom Leonardo Diwa fought against?

"A-

Yes, sir.

"Q-

Were you able to identify the person?

"A-

Yes, sir.

"Q-

If they are inside the Courtroom, will you be able to identify them?

"A-

Yes, sir.

"Q-

Please point to them.

"A-

(Witness pointing to the persons when asked answered to the names Teodoro Esmale and Juan Tresvalles.)

"xxx xxx xxx"[28]

However, this Court cannot, with an assured conscience, convict appellant on the basis of Sosa's identification. His testimony cannot pass the test that "evidence to be believed, must proceed not only from the mouth of a credible witness but the same must be credible in itself." [29] His identification of appellant crumbled on cross-examination, thus:

"xxx xxx xxx

"ATTY. ALVAREZ:

You said awhile ago that the alleged hold-up was committed on September 27, 1985 at around 7:30 in the evening, before that date and time, was there a time that you met the accused specifically Teodoro Esmale and Juan Tresvalles, Jr.?

"WITNESS:

No, sir.

"Q-

After September 27, 1985 and after the alleged robbery incident, were you able to meet the accused again specifically Teodoro Esmale and Juan Tresvalles, Jr.?

"A-

Yes, sir.

"Q-

Where did you meet them?

"A-

Marikina Police Station.

"Q-

Was that the same day when the alleged robbery was committed?

"FISCAL:

The witness could hardly recall the date. He is incompetent to recall the date.

"COURT:

Witness may answer.

"WITNESS:

Yes, sir.

"COURT:

Do you want to convey to the Court that after the incident on September 27, 1985 at 7:30 in the evening, you again saw the accused Teodoro Esmale and Juan Tresvalles at the Police Station on that same date September 27?

"A- Yes, sir.

"ATTY. ALVAREZ:

What time did you see them at the Police Station?

"A-

9:10 or 9:20 in the evening.

"COURT:

That was September 27?

"A-

Yes, sir.

"ATTY. ALVAREZ:

Was there any other date after the incident that you met the accused?

"A-

No more.

"COURT:

Do you want to convey to the Court that soon after the incident, the two accused Teodoro Esmale and Juan Tresvalles were arrested?

"WITNESS:

(No answer from witness.)

"COURT:

The Court will reform the question. Why did you see the accused Esmale and Tresvalles at the Police Station at about 9:10 p.m. of September 27, 1985?

"A-

I was called by the police.

"COURT:

That very evening?

"A-

Yes, sir.

"COURT:

Proceed.

"xxx xxx xxx

"Q-

You said a while ago that you do not know the accused yet before the incident happened, would you like to tell the Honorable Court how come you were able to know the names of the accused?

"A-

I came to know their names when I was brought to the Police Station.

"Q-

But when you went to the Police Station, the accused were already there, is that right?

"A-

Yes, sir.

"Q-

How come you were able to know the names of the accused at the police station?

"A-

The policeman told me.

"Q-

Did the policeman point to you the exact accused?

"A-

Yes, sir.

"xxx xxx xxx"[30]

Other evidence on record belie Sosa's testimony. They show that it was impossible for him to have pointed out to accused Esmale and appellant at the Marikina Police station on the night of September 27, 1985. Sosa's own sworn statement (Exh. "D") states that he picked out accused Esmale from a line-up at the station on October 17, 1985. No similar identification was made of appellant, who was then not yet in police custody. This is consistent with the sworn statement of eyewitness Balbastro (Exh. "C"), who also deposed that he picked out only accused Esmale from a line-up at the Marikina precinct. Furthermore, it is a fact that accused Esmale was arrested on October 17, 1985, while appellant was apprehended on January 8, 1986. We note that the original Information in this case, dated November 19, 1985, was filed only against accused Esmale and reads, in part, thus:

"That on or about the 27th day of September, 1985, in the Municipality of Marikina, Metro Manila, Philippines, the above-named accused, conspiring and confederating together with Junior Tresvalles, Oscar Camacho and John Doe @ Raul who are still at large and mutually helping and aiding with one another, armed with a gun/knives, with intent of gain and by means of force, violence and intimidation, did, then and there willfully, unlawfully and feloniously hold up a passenger jeepney driven by Melecio Abenojar and his passengers xxx." [31] (Underscoring supplied.)

Sosa's credibility is further impaired by the fact that he failed to detail appellant's actual participation in the robbery-homicide. It is incredulous that Sosa could identify appellant as one of the hold-uppers yet could not testify on what appellant did during the commission of the crime.

Lastly, the prosecution's labored attempt to identify appellant is not helped by accused Esmale's statement-cum-confession implicating appellant in the commission of the crime. As the trial court itself found:

"xxx (T)aking into consideration the circumstances under which said confession was made wherein the accused was not assisted by a lawyer when he executed the same or even granting as claimed by the arresting officers, that there was a waiver on the part of the accused of his right to counsel, the waiver being made also without assistance of counsel, the same would therefore constitute violation of his constitutional rights. The Court hereby declares said sworn statement of Esmale to be inadmissible in evidence against him even as against Juan Tresvalles." [32]

In the recent case of *Alvin Tuason y Ochoa v. Court of Appeals and People of the Philippines*, G.R. Nos. 113779-80, February 23, 1995, this Court held, viz.:

"The first duty of the prosecution is not to prove the crime but to prove the identity of the criminal. For even if the commission of the crime can be established, without proof of identity of the criminal beyond reasonable doubt there can be no conviction. xxx"

In the case at bench, the prosecution failed to establish with certainty appellant's identity and involvement in the crime. He is entitled to a mandatory acquittal.

IN VIEW WHEREOF, the appeal is GRANTED. The conviction of JUAN TROPE TRESVALLES, JR. by the Regional Trial Court of Pasig, Branch 153, dated July 25, 1991, is REVERSED AND SET ASIDE. No costs.

SO ORDERED.

Narvasa, C.J., (Chairman), Regalado, and Mendoza, JJ., concur.

[1] Original Records of Criminal Case No. 65275, p. 4. On June 5, 1986, said Criminal Case was ordered consolidated with Criminal Case No. 65026, wherein accused Esmale was charged with the very same hold-up and homicide committed on September 27, 1985.

[2] Deceased Leonardo Diwa's brother-in-law. He testified on July 14, 1987.

[3] Testified on September 16, 1987.

[4] TSN of July 14, 1987, pp. 3-5; TSN of September 16, 1987, pp. 2-8.

[5] Ibid., at pp. 31-32; TSN of July 15, 1987, pp. 6-9.

[6] Testified on March 3, 1988.

[7] Medico-Legal Report No. M-3091-85, Exhibit "H", Original Records, p. 178.

- [8] The sworn statement embodying his confession was taken by Pat. Jaime Gamueda at 12:45 p.m., October 16, 1985.
- [9] Exh "J", Original Records, pp. 182-186.
- [10] Exh. "A", Original Records, p. 166. The sworn statement was taken by Pat. Renato Jacobe at 10:30 a.m., October 17, 1985.
- [11] Exh. "B", Original Records, pp. 167-168. The statement was taken by Pat. Cesar Bejuna at 8:25 p.m. October 17, 1985.
- [12] Exh. "C", Original Records, pp. 169-170. The statement was taken by Pat. Romeo D. Aninag at 9:30 p.m., October 17, 1985.
- [13] Exh. "D", Original Records, p. 171. The statement was taken by Pat. Cesar Bejuna at 9:00 p.m., October 17, 1985.
- [14] See TSN of March 8, 1989.
- [15] TSN of April 12, 1989, pp. 3-6.
- [16] According to Esmale, appellant is the uncle of his wife (TSN of April 12, 1989, p. 11). On the other hand, appellant testified that Esmale's wife is his cousin (TSN of August 9, 1989, p. 3).
- [17] Lt. Alibadbad, who testified on December 5, 1989, is the brother-in-law of appellant's father.
- [18] See TSN of December 5, 1989.
- [19] Already deceased.
- [20] TSN of August 9, 1989, pp. 5-6; TSN of December 5, 1989, pp. 11, 13.
- [21] TSN of August 9, 1989, p. 3.
- [22] Regional Trial Court of Pasig, Branch 153, presided over by Judge Armie B. Elma.
- [23] Impugned Decision, pp. 7-8; Rollo, pp. 24-25.
- [24] Appellant's Brief, p. 4.
- [25] Sec. 14(2), Article III of the 1987 Constitution reads: "In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved, and shall enjoy the right to be heard by himself and counsel, to be informed of the nature and cause of the accusation against him, to have a a speedy, impartial, and public trial, to meet the witnesses face to face, and to have compulsory process to secure the attendance of witnesses and the production of evidence in his behalf. However, after arraignment, trial may proceed notwithstanding the absence of the accused provided that he has been duly notified and his failure to appear is unjustifiable."
- [26] Direct Examination, TSN of July 14, 1987, pp. 6-10.
- [27] Cross-Examination, TSN of July 14, 1987, pp. 17-22.
- [28] Direct Examination, TSN of September 16, 1987, pp. 8-11.
- [29] See *People v. Escalante*, G.R. No. 106633, December 1, 1994; *Tuason v. Court of Appeals, et al.*, G.R. Nos. 113779-80, February 23, 1995.
- [30] TSN of September 16, 1987, pp. 23-30.

[31] Original Records, p. 1.

[32] Rollo, pp. 23-24.

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