

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. EDMUNDO SOTTO Y PIEDAD AND QUINTIN GARRAEZ Y TAN, ACCUSED, QUINTIN GARRAEZ Y TAN, ACCUSED-APPELLANT.

G.R. Nos. 106083-84. March 29, 1996

Ponente: VITUG, J.

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VITUG, J.:

The Regional Trial Court of Palawan and Puerto Princesa City, Branch 50, convicted Quintin Garraez y Tan (herein appellant) and his co-accused Edmundo Sotto[1] of the crime of robbery with multiple homicide.[2]

Garraez and Sotto were charged with the crimes of robbery with double homicide and frustrated homicide with the use of illegally possessed firearm (Criminal Case No. 5803) and robbery with homicide with the use of illegally possessed firearm (Criminal Case No. 5804). The charges, contained in two separate informations, read:

In Criminal Case No. 5803:

"That on or about the 24th day of June 1985 at Sangat Island, Municipality of Coron, Province of Palawan, Philippines and within the jurisdiction of this Honorable Court, the abovenamed accused, conspiring, confederating together and mutually assisting one another, with the use of illegally possessed firearm and a motorized banca named 'MI ANN,' ambush, stop and hijack M/Bca JOJO IRA II, brought it to Sangat Island, Coron, Palawan and upon reaching the same have the passengers thereof tied with a rope and thereafter did then and there wilfully, unlawfully and feloniously attack, assault and shot Rosauro Wenceslao, Silveriano Pangilinan and Fernando Marasigan causing them injuries which resulted to the instantaneous death of Rosauro Wenceslao and Silveriano Pangilinan and seriously wounding Fernando Marasigan thus performing as against the latter all the acts of execution which would have produced the crime of Murder as a consequence but which nevertheless did not produce it by reason of causes independent of the will of the accused, that is by the timely and able medical attendance rendered to said Fernando Marasigan, after which, accused did then and there wilfully, unlawfully and feloniously take, steal and carry away with Josephine Galvez cash and in check the sum of Thirty Three Thousand Fifteen (P33,015.00) Pesos, Philippine Currency without the knowledge and consent of its owner Aida P. Marasigan to her damage and prejudice in the aforesaid amount of P33,015.00.

"CONTRARY TO LAW."[3]

In Criminal Case No. 5804:

"That on or about the 24th day of June 1985 at Sangat Island, Municipality of Coron Province of Palawan, Philippines and within the jurisdiction of this Honorable Court the abovenamed accused, conspiring, confederating together and mutually assisting one another with the use of illegally possess (sic) firearm and a motorized banca named 'MI ANN,' and with intent of gain ambush, stop and hijack M/Bca JOJO IRA II brought it to Sangat Island, Coron Palawan and upon reaching the same tied with a rope the passengers thereof thereafter, (sic) did then and there, wilfully, unlawfully and feloniously take, steal and carry away with Josephine Galvez cash and in check in the total sum of Thirty Three Thousand Fifteen (P33,015.00) Pesos Philippine Currency owned by Aida Marasigan, brought said Josephine Galvez to Sitio Dipuyay, Barangay

Sto. Nino, Busuanga, Palawan and did then and there wilfully, unlawfully and feloniously assault, attack and shot Josephine Galvez hitting her in various vital parts of her body and inflicting upon her injuries which was the direct and immediate cause of her death immediately thereafter, to the damage and prejudice of Aida Marasigan in the sum of P33,015.00.

"CONTRARY TO LAW."[4]

Upon their arraignment on 24 October 1985, both accused pleaded not guilty.[5] On 14 December 1985, the trial court denied Sotto's petition for bail but granted that of appellant, fixing the amount of bail at P25,000.00[6] but later increased to P100,000.00. Sotto's second petition for bail was, on 24 February 1986, likewise denied.[7] On 29 August 1986, after the prosecution had presented five of its six witnesses, Sotto escaped from detention. Sotto's exact whereabouts could not (to date) be ascertained. Appellant himself was later also ordered arrested and confined[8] for his failure to attend a hearing.

The prosecution gave a chilling account of the incident.

On 24 June 1985, Aida Marasigan, a businesswoman engaged in the sale of rice and other grocery items in Balala, Culion, Palawan, instructed Josephine Galvez, one of her employees, to purchase rice in Coron, Palawan. Aida entrusted to Josephine the sum of P33,015.00, consisting of cash in the amount of P28,470.00 and two (2) checks, one for P2,470.00 and another for P1,875.00.[9] Josephine was accompanied by Silveriano Pangilinan and Fernando Marasigan, a nephew of Aida Marasigan, who were Aida's sales helpers. The three, namely, Josephine, Silveriano and Fernando, took the pumpboat JOJO IRA II operated by Rosauro Wenceslao.[10]

En route to Coron at around noontime, the pumpboat was blocked by a banca labeled "MI ANN." On board the banca were two persons. Josephine inquired what the trouble was. One of the two men, later identified to be Quintin Garraez, replied that the engine's contact point of the banca was busted and asked that it be towed towards Coron.[11] The group having acceded to the request, Fernando caught the rope thrown from the banca and tied it to the "batanga." Edmundo Sotto, the companion of Garraez, then pulled the rope until it enabled Sotto to transfer to the pumpboat. Once on board, Sotto suddenly pulled out a gun and ordered that the pumpboat speed towards a place, later learned to be Sangat Island, away from Coron. Meanwhile, the banca MI-ANN with Garraez on the helm disappeared from sight.

Upon their arrival at Sangat Island, Sotto warned the group not to make any attempt to flee. Sotto alighted from the boat first, followed by the rest. He ordered Rosauro to get a rope. When Rosauro found one, he was told by Sotto to tie behind the arms of both Fernando and Silveriano. Sotto, who was around ten meters away from the group, next ordered Josephine's hands to be tied. He then directed Rosauro to maneuver the pumpboat to a seaward position and to start its engine. Having accomplished Sotto's orders, Rosauro was told to also tie himself up.[12] Josephine pleaded not to be harmed and offered to Sotto her bag containing the money Aida had entrusted to her. Saying that he did not need it,[13] Sotto, nevertheless, got the bag from Josephine ("Pero kinuha rin ho niya").[14]

Sotto tied Josephine to the trunk of a tree and then commanded the three men to walk inland towards the mountain range. Rosauro, Silveriano and Fernando walked, each following the other, with Sotto, to the right of Fernando, accosting them.[15] After walking several meters away, Sotto suddenly stopped. Within seconds and from a distance of about a meter, Sotto shot Rosauro, Silveriano and Fernando in that order.[16] Upon being hit, Fernando pretended to be dead. Later, sensing that Sotto had already gone down, Fernando rubbed the rope around his wrists against a stone in freeing himself. Returning to the shore, Fernando found himself alone.[17] Fortunately, the following morning, Cesario Almerida passed by the island with his grandson, and he was able to bring Fernando to Culion.[18]

Fernando, twenty years old, sustained two penetrating gunshot wounds in the "right claviculo-humeral joint" and the "4th intercostal space right, along anterior axillary line." [19] Following Fernando's description of the culprits, several persons were picked up and presented to him for identification but were promptly dismissed for not being the malefactors. [20] Meanwhile, a search team was formed to retrieve the bodies of Rosauro and Silveriano. The cadavers were found about a hundred meters from the shore. The police found empty shells of a caliber .38 firearm around four meters away from the victims. [21]

Nineteen-year-old Rosauro sustained a gunshot wound at the left mallar section below the left eye with an exit wound in front of the right ear, a gunshot wound at the level of the 4th costal ribs two inches from the sternum which penetrated the heart and exited at the back at the level of the lumbar area, and another wound between the 3rd and 4th intercostal ribs at the anterior axillary line of the chest "finding its way out just below the angle of the right scapula." His arm, chest and back bore rope marks. [22]

Like Rosauro, nineteen-year-old Silveriano had rope marks on his arms. He suffered a gunshot wound at the neck, a gunshot wound on the chest above the right nipple, and another gunshot wound on the lateral portion of the right arm. [23]

The police traced ownership of the banca MI ANN to Renato Avelida (Abelida) who informed the police that the banca was borrowed by Sotto and Garraez on 24 June 1985. With this information, the police. invited the two to Culion and presented them to Fernando for identification. The latter pointed positively to Sotto as the one who fired at them and killed his companions [24] and Garraez as the companion of Sotto. [25]

On 26 June 1985, the now decomposing body of Josephine, with gunshot wounds on the chest and the abdomen, [26] was found at Sitio Dipuyay. Sotto led the police to its location. Photographs were taken of the body. [27] Sotto also revealed to the police that part of the loot taken from Josephine was hidden in the cock house of his poultry in his compound. Since Sotto would not go to his house to avoid, he said, agitating his family, Garraez, instead, accompanied the police in recovering the money amounting to P6,600.00. [28]

In his defense, Garraez interposed denial and alibi. [29] He testified that from the 22nd to 26th of June, 1985, he was working in a farm in Barangay Bintuan, Coron, Palawan. Although he admitted knowing Sotto, Garraez denied having been with him on 24 June 1985. He also denied having borrowed Abelida's boat. He stated that following his arrest on 26 June 1985, he was presented to Fernando for identification but the latter was not all that sure that Garraez was one of the culprits. Nevertheless, he said, he was put in jail. [30]

The trial court convicted appellant for being a co-principal in the crime of "robbery with multiple homicide and frustrated homicide"; it held, however, that the charge for illegal possession of firearms was unsubstantiated. The dispositive portion of the decision read:

"WHEREFORE, and in view of the foregoing considerations, judgment is hereby rendered finding both the herein accused guilty beyond reasonable doubt as principals of the crime of robbery with multiple homicide and frustrated homicide as the same is defined and penalized under the Revised Penal Code, the same constituting only as one offense, sentencing both the accused to suffer the penalty of reclusion perpetua as well as to pay the costs. They are furthermore ordered to indemnify jointly and severally the heirs of the 3 deceased namely, Rosauro Wenceslao, Silveriano Pangilinan and Josephine Galvez the amount of P50,000.00 each or a total of P150,000.00 as and for the death of the 3 deceased. They are further ordered to indemnify the heirs of the victims, jointly and severally in the sum of P50,000.00 each or a total of P 150,000.00 as and for moral damages. In the case of the surviving victim, Fernando Marasigan, both the accused are hereby ordered jointly and severally to indemnify the latter the amount of P30,000.00 as and for moral damages. Lastly, they are likewise ordered to indemnify jointly and severally Aida Marasigan the sum of P26,415.00 which constitutes part of the unrecovered amount." [31]

In this appeal, appellant faults the trial court for not giving credence to his defense.

The conviction of Garraez is primarily anchored on the testimony of an eyewitness, Fernando Marasigan, who so pointed to appellant as the companion of Sotto in seizing the pumpboat with its people on board. Although Fernando admitted being unable to recall appellant's outfit at the time,[32] the witness' identification of the culprits was unequivocal. The incident happened in the afternoon where there was sufficient light to enable Fernando to take a good look at the malefactors.

"Q

A while ago, I mean this morning you mentioned that Josephine Galvez talked with one of the two persons on board the banca that blocked your way, who was that person with whom Josephine Galvez talked with?

"A

Garraez, sir.

"Q

I forgot what the answer of Garraez was, can you repeat that to the Honorable Court, the answer of Garraez to the question of Josephine Galvez?

"A

She asked him what happened.

"Q

And what was the answer of Garraez?

"A

Garraez answered that their contact point burst and if possible they be towed towards Coron.

"Q

And after that they threw a piece of rope towards your banca?

"A

The fair complexion man told me to release it and he told Rosauro Wenceslao to start the engine.

"Q

Who is this fair complexion man, do you know the name?

"A

I do not know his name yet.

"Q

Is he in the other banca, not in the banca where you were then riding?

"A

That fair complexion man transferred to our banca while the other dark complexion man was left in their banca.

"COURT TO WITNESS:

"Q

You mentioned a fair complexion man and another dark complexion man, can you look around the courtroom and tell us whether these two persons you have referred just now are here?

"A

Yes, your honor.

"Q

Will you point to them?

"A

This is the fair complexion man (witness pointing to accused Edmundo Sotto) and this is the dark complexion man (witness tapping the shoulder of Quintin Garraez)

"Q

In that banca where it was claimed by one of the passengers that the contact point burst, how many passengers on board that banca while you were moving towards them?

"A

Only two sir."[33]

The trial court gave preponderant weight to the above testimony of Fernando. We have consistently held that when the issue is one of credibility of witnesses, the appellate court normally will not disturb the findings of the trial court considering the latter's clear vantage point in resolving that question.[34] There is here no cogent reason to depart from the rule. Fernando Marasigan's credibility is bolstered by the failure of the defense to impute any such ill motive as to have compelled him to testify wrongly against appellant.[35]

The testimony of a single eyewitness is sufficient to support a conviction so long as that testimony is found by the trial court to be clear, straightforward and worthy of belief.[36] Appellant assails the fact that he and Sotto have not been placed on a police line-up. There is no law requiring a police line-up; without it, there could still be proper identification as long as that identification is not suggested to the witness by the police.[37]

The identification made by Fernando of appellant and Sotto, when brought by the police to the hospital, was spontaneous. Lt. Rolando Abutay, the then executive officer of the 265th Philippine Constabulary company stationed at Coron, Palawan, testified:

"Q.

Having presented Garraez and Sotto to the survivor what happened next?

"A.

Immediately the survivor rise in anger and pointed to Sotto who killed his companions and shot them (sic).

"Q.

Who is the name of the survivor?

"A.

Fernando (Onit) Marasigan.

"Q.

Fernando Marasigan having pointed to Sotto as the person who shot them and killed his companions what did you do next?

"A.

I also presented Garraez to the survivor and the survivor said that he was Sotto's companion."
[38]

CIC Saidhasim Asiddin, a member of the Philippine Constabulary to whom Aida Marasigan had reported the failure of her employees to return from their errand, declared:

"Q.

How did you come to know Quintin Garraez?

"A.

He was one of those who were fetched at Bintuan for investigation.

"Q.

You would like to tell the Honorable Court that when you invited Edmundo Sotto you also invited at the same time Quintin Garraez?

"A.

Yes, sir.

"Q.

And when Edmundo Sotto was identified by Fernando Marasigan as the one who shoot (sic) them, where was Quintin Garraez?

"A.

He was also there at the hospital.

"Q.

Do you know if Quintin Garraez was also shown to Fernando Marasigan?

"A.

He was also shown, sir.

"Q.

And what was the reaction of Fernando Marasigan when Quintin Garraez was shown to him?

"A.

He said he is (sic) the companion of Edmundo Sotto who held them up."[39]

The evidence adduced against appellant renders unavailing to him the defense of alibi.

The trial court evidently was not that certain on the possible existence of conspiracy between Sotto and appellant although the court appeared satisfied that appellant had known of Sotto's criminal design. In the inadequacy of proof of conspiracy, a doubt on whether an accused acted as a principal or as an accomplice in the perpetration of the offense should be resolved in favor of the latter kind of responsibility.[40] The trial court, we believe, thus erred in holding appellant equally liable with Sotto. Factually similar to the instant case was that of *People vs. Doble*,[41] where the appellants were so held liable as accomplices for allowing themselves to join the criminal design of the perpetrators of robbery in band by looking for a banca, providing the principals with one and, with the banca, conducting the malefactors to the Prudential Bank and Trust Company in Navotas, Rizal. In the instant case, appellant's community of criminal design with Sotto could be inferred from his act of blocking the victims' pumpboat with the banca he was operating, of pretending that the banca needed to be towed and of conducting Sotto on board the pumpboat. Although not indispensable, in the commission of the crimes charged considering that Sotto could have well solicited the help of anyone else other than appellant in ferrying him to the pumpboat, appellant's assistance, nonetheless, was undoubtedly one of help and cooperation.

The crime proven beyond reasonable doubt is one of robbery with homicide, not robbery with multiple homicide and frustrated homicide. The term "homicide" in Article 294, paragraph (1) of the Revised Penal Code has been meant to be used in its generic sense, embracing not only the act which results in death but also all other acts producing anything short of death, and it is thus designated regardless of the number of homicides and physical injuries committed.[42] In cases where several persons are killed during a robbery, such multiplicity of victims slain could only be appreciated as aggravating circumstance.[43]

Robbery with homicide under Article 294(1) of the Revised Penal Code is punishable by reclusion perpetua to death. An accomplice must suffer a penalty which is one degree lower, which in this case is reclusion temporal,[44] than that prescribed for the principal.[45] With the application of the Indeterminate Sentence Law, appellant should thus suffer a minimum penalty within the range of prision mayor and a maximum penalty within the range of reclusion temporal.[46] He shall pay one-half of the amount of civil indemnity imposed correctly by the trial court upon Sotto.[47]

WHEREFORE, appellant Quintin Garraez is hereby found guilty beyond reasonable doubt of being an accomplice in the commission of robbery with homicide for which he shall suffer the indeterminate penalty of eight (8) years and one (1) day of prision mayor medium as the minimum penalty to fifteen (15) years of reclusion temporal medium as the maximum penalty. He shall pay half of the civil indemnity imposed by the trial court in the amount of P50,000.00 to the respective heirs of each of the slain victims Josephine Galvez, Silveriano Pangilinan and Rosauro Wenceslao or a total amount of P75,000.00, as well as P15,000.00 by way of indemnity in favor of survivor Fernando Marasigan. The Philippine National Police and the National Bureau of Investigation are directed to exert all efforts for the arrest of Edmundo Sotto y Piedad in order that he might serve the penalty

imposed upon him by the court below. Costs against appellant.

SO ORDERED.

Padilla (Chairman), Bellosillo, Kapunan, and Hermosisima, Jr., JJ., concur.

- [1] At large.
- [2] Penned by Judge Angel R. Micalat.
- [3] Rollo, pp. 4-5.
- [4] Rollo, pp. 6-7.
- [5] Records, Vol. I, p. 22.
- [6] *id.*, p.47.
- [7] *Ibid.*, p. 67.
- [8] *Ibid.*, p. 418.
- [9] TSN, August 25, 1987, pp. 3-5.
- [10] *Ibid.*, p. 10.
- [11] TSN, December 11, 1985, pp. 11-13.
- [12] *Ibid* pp. 9-21.
- [13] *Ibid.*, p. 46.
- [14] TSN, December 12, 1985, p. 5.
- [15] TSN, December 11, 1985, p. 24.
- [16] *Ibid.*, p. 25.
- [17] *Ibid.*, p. 27.
- [18] *Ibid.*, pp. 30-31.
- [19] Exh. C. Records, Vol. I, p. 294.
- [20] TSN, June 4, 1986, pp. 27-33.
- [21] TSN, June 3, 1986, pp. 11-18; June 4, 1986, p. 5.
- [22] Exh. A, Records, Vol. I, p. 288.
- [23] Exh. B, Records, Vol. 1, p.291.
- [24] TSN, June 3, 1986, pp. 19-24; December 11, 1985, p. 34.
- [25] TSN, June 4, 1986, pp. 13-14; December 11, 1985, pp. 32-33.
- [26] Exh. A-pros., Records, Vol. 1, p. 357.
- [27] Exhs. J-1 to J-12.

[28] TSN, August 20, 1986, pp. 13-14.

[29] On 26 June 1985, appellant executed a "sinumpaang salaysay" admitting that on 24 June 1985, he and Sotto borrowed the "MI ANN" from Abelida because Sotto wanted to visit the grave of the person who brought him up in Balala, Culion, Palawan; that he acted as the operator ("makinista") of the pumpboat; that he could not know whether Sotto was able to visit the graveyard because at around noontime, they went back to Bintuan; that near Chinduan, the pumpboat had engine trouble; that when they saw an approaching pumpboat, Sotto waved and boarded the pumpboat; that Sotto told him that he would be taking the pumpboat while he was repairing the banca; that Sotto told him to fetch him at Sangat Island; that after fixing the banca, he went to Sangat Island where he found Sotto and the female passenger of the pumpboat; that he took the two to Brgy. Sto. Niño (Dipuyai) in Busuanga, Palawan; that Sotto told him to go to Brgy. Maglambay in Busuanga to buy softdrinks and biscuits; that when he returned, the woman was no longer around, and that he and Sotto then went back to Bintuan (Exh. F). In executing this "sinumpaang salaysay," appellant waived his right to counsel.

[30] TSN, July 24, 1989, pp. 3-16.

[31] Rollo, p. 29.

[32] TSN, December 11, 1985, p. 38.

[33] TSN, December 11, 1985, pp. 15-16.

[34] *People vs. Viñas*, 245 SCRA 448; *People vs. Manuel*, 234 SCRA 532.

[35] See *People vs. Dayson*, 242 SCRA 124.

[36] *People vs. De Roxas*. 241 SCRA 369.

[37] *People vs. Florendo*, 230 SCRA 599; *People vs. Salguero*, 198 SCRA 357.

[38] TSN, August 20, 1986, p. 7.

[39] TSN, June 4, 1986, pp. 13-14.

[40] *People vs. Tolentino*, 40 SCRA 514, citing *People vs. Rival*, 10 SCRA 462.

[41] 114 SCRA 131.

[42] *People vs. Servillon*, 236 SCRA 385.

[43] *People vs. Timple*, 237 SCRA 52.

[44] "Art. 61. Rules for graduating penalties. - xx x.

"2. When the penalty prescribed for the crime is composed of two indivisible penalties, or of one or more divisible penalties to be imposed to their full extent, the penalty next lower in degree shall be that immediately following the lesser of the penalties prescribed in the respective graduated scale."

[45] Art. 52, Revised Penal Code.

[46] *People vs. Pastores*, 40 SCRA 498.

[47] *People vs. Barbosa*, 86 SCRA 217.

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