

ALVIN TUASON Y OCHOA, PETITIONER, VS. COURT OF APPEALS AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. Nos. 113779-80. February 23, 1995

Ponente: PUNO, J.

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PUNO, J.:

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. In the case at bench, the identification of the petitioner cannot rest on an assured conscience. We rule that petitioner is entitled to a mandatory acquittal.

Petitioner Alvin Tuason y Ochoa, John Doe, Peter Doe, and Richard Doe were charged before the Regional Trial Court of Quezon City [1] with Robbery [2] (Article 294, paragraph 5 of the Revised Penal Code) and Carnapping [3] (Republic Act No. 6539).

Of the four (4) accused, only petitioner was apprehended. The other three (3) are still at-large.

Upon arraignment, petitioner pleaded not guilty to both charges and was tried.

We come to the facts.

Complainant CIPRIANA F. TORRES is a public school teacher of Kaligayahan Elementary School, Novaliches. Her work requires her to leave her maid, JOVINA MADARAOG TORRES, alone in her house at Block 45, Lot 28, Lagro Subdivision, Novaliches, Quezon City. Her husband is in Australia while her children go to school.

The incident transpired at around 8:45 in the morning of July 19, 1988. Somebody knocked at the gate of the Torres residence pretending to buy ice. As the maid Madaraog handed the ice to the buyer, one of the robbers jumped over the fence, poked a gun at her, covered her mouth, and opened the gate of their house. [4] The ice buyer and his companions barged in. Numbering four (4), they pushed her inside Torres' house and demanded the keys to the car and the safety vault. [5] She told them she did not know where the keys were hidden. [6] They tied up her hands and dragged her to the second floor of the house. Petitioner was allegedly left downstairs as their lookout. [7]

On order of the accused, Madaraog sat on Torres' bed, her body facing the bedroom door with her back on the vault. They also gagged her mouth and ransacked Torres' room. One of the accused stumbled upon a box containing keys. They used the keys to open drawers and in the process found the car key. Petitioner was then summoned upstairs and given the car key. He tried it on the car and succeeded in starting its engine.

In twenty (20) minutes, accused were able to loot the vault and other valuable items in the house. They then tied Madaraog's hands and feet to the bed's headboard and escaped using Torres' car.

Still gripped with fear, Madaraog loosened her ties with her fingers, hopped to the stairs, and cried for help. [8] Her neighbor Semia Quintal responded and untied her. They also sought the help of Angelina Garcia, another

neighbor. It was Garcia who informed Torres that her house was burglarized.

Torres reported the robbery to the police authorities at Fairview, Quezon City and the National Bureau of Investigation (NBI). On July 25, 1988, Madaraog and Quintal described the physical features of the four (4) robbers before the NBI cartographer. One of those drawn by the artist was a person with a large mole between his eyebrows. [9] On August 30, 1988, petitioner was arrested by the NBI agents. The next day, at the NBI headquarters, he was pointed to by Madaraog and the other prosecution witnesses as one of the perpetrators of the crimes at bench.

SEMIA QUINTAL [10] averred that she saw petitioner allegedly among the three (3) men whiling away their time in front of Alabang's store some time before the crimes were committed. Quintal is a neighboring maid.

MARY BARBIETO [11] likewise declared that she saw petitioner allegedly with several companions standing-by at Torres' house that morning of July 19, 1988. She is a teacher and lives within the block where the crimes were committed.

Petitioner ALVIN TUASON, [12] on the other hand, anchored his defense on alibi and insufficient identification by the prosecution. He has lived within the neighborhood of the Torres family since 1978. He averred that on July 19, 1988, he was mixing dough and rushing cake orders from 7:00 o'clock in the morning till 1:00 o'clock in the afternoon at his sisters' TipTop Bakeshop in Antipolo Street, Tondo, Manila. It takes him two (2) hours to commute daily from Lagro, Novaliches to Tondo.

He was arrested more than one (1) month after the robbery. On August 30, 1988 at about 8:00 o'clock in the evening, he was in their house watching a basketball game on T.V. and went out to buy a cigarette. On his way back, a person accosted him and asked his name. After he identified himself, [13] a gun was poked at his right side, a shot was fired upward, and five (5) men swooped on him without any warrant of arrest. He asked them if he could wear t-shirt as he was naked from waist up. They refused. They turned out to be NBI agents of one of whom a certain Atty. Harwin who lived in Lagro, Novaliches. He was shoved into the car and brought to the NBI headquarters. [14] He was surprised when an NBI agent, whose identity was unknown to him, pointed to him as one of the suspects in the robbery in the presence of Madaraog and the other prosecution witnesses.

Petitioner's sister ANGELI TUASON, [15] part-owner of Tiptop Bakeshop corroborated his story. She testified that on July 17, 1988 she asked her sister Mary Ann to remind petitioner to work early on July 19, 1988 since Mondays, Tuesdays, and Wednesdays are busy days as she caters to schools.

The trial court in a Joint Decision convicted petitioner of the crimes charged and sentenced him as follows:

x x x x x x x x

"In Q-88-396 (carnapping) for an indeterminate term of SEVENTEEN (17) YEARS and FOUR (4) MONTHS as minimum and TWENTY (20) YEARS as maximum; and in Q-88-397 (robbery) for a term of ONE (1) YEAR, SEVEN (7) MONTHS and ELEVEN (11) DAYS as minimum and TWO (2) YEARS, TEN (10) MONTHS and TWENTY (20) DAYS as maximum.

On the civil aspect, the court hereby orders Alvin Tuason y Ochoa as follows:

1. In Q-88-396 (carnapping) to return to Mrs. Cipriana Torres and her husband the carnapped Toyota Corona Sedan, Model 1980 with Plate No. NPZ 159 or to pay its value of P180,000.00 which the court finds to be the reasonable value of said car; and
2. In Q-88-397 (robbery) to return to Mrs. Cipriana Torres and her husband the stolen items mentioned in the information filed in said case and hereinabove stated or pay the corresponding values thereof or a total of

P280,550.00 which the court finds to be the reasonable values.

This civil liability is joint and solidary with the co-conspirators of accused Alvin Tuason.

In case of appeal, the bailbonds are fixed at TWO HUNDRED EIGHTY THOUSAND PESOS (P280,000.00) for criminal case No. Q-88-396 and ONE HUNDRED THOUSAND PESOS (P100,000.00) for criminal case No. Q-88-397.

Costs against the accused.

SO ORDERED.” [16]

Petitioner appealed to respondent Court of Appeals. On December 16, 1993, the Eleventh Division of the appellate court gave no credence to the exculpatory allegations of petitioner and affirmed in toto the assailed Decision. [17] On February 4, 1994, petitioner's Motion for Reconsideration was denied for lack of merit. [18]

In this petition for certiorari, petitioner contends that respondent appellate court erred:

A.

[I]N WRONGLY APPLYING TO THE CASE AT BAR THE PRINCIPLE THAT FINDINGS OF TRIAL COURTS ARE GENERALLY NOT DISTURBED ON APPEAL, PARTICULARLY CONSIDERING THAT THE FINDINGS OF THE TRIAL COURT IN THIS CASE ARE BASED ON CERTAIN REFUTABLE REASONS EXPRESSLY STATED IN ITS DECISION.

B.

[I]N WRONGLY APPLYING TO THE TESTIMONY OF HEREIN PETITIONER THE CONCEPT AND ATTENDING INFIRMITY OF "SELF-SERVING EVIDENCE."

C.

[I]N WRONGLY APPLYING TO THE TESTIMONY OF HEREIN PETITIONER THE CONCEPT AND ATTENDING INFIRMITY OF "NEGATIVE EVIDENCE."

D.

[F]OR IGNORING OR DISREGARDING THE GLARING AND FATAL INFIRMITIES OF THE TESTIMONIES OF PROSECUTION WITNESSES, SPECIALLY AS IDENTIFICATION, AS WELL AS TO THE PALPABLE IMPROBABILITY OF HEREIN PETITIONER HAVING BEEN A SUPPOSED PARTICIPANT IN THE OFFENSES CHARGED, THE ERROR BEING TANTAMOUNT TO GROSS MISAPPREHENSION OF THE RECORD.

E.

[I]N AFFIRMING THE CLEARLY REVERSIBLE DECISION OF THE TRIAL COURT.

We reverse.

Time and again, this Court has held that evidence to be believed, must proceed not only from the mouth of a credible witness but the same must be credible in itself. [19] The trial court and respondent appellate court relied mainly on the testimony of prosecution witness Madaraog that from her vantage position near the door of the bedroom she clearly saw how petitioner allegedly participated in the robbery. After a careful review of the evidence, we find that the identification of petitioner made by Madaraog and Quintal is open to doubt and cannot serve as a basis for conviction of petitioner.

Firstly, it must be emphasized that of the four (4) prosecution witnesses, only the maid Madaraog actually saw petitioner in the act of committing the crimes at bench. Witnesses Quintal and Barbieto testified they only saw petitioner at the vicinity of the crimes before they happened. There is, however, a serious doubt whether Madaraog and Quintal have correctly identified petitioner. At the NBI headquarters, Madaraog described petitioner as 5'3" tall and with a big mole between his eyebrows. [20] While Quintal also described petitioner as 5'3" and with a black mole between his eyebrows. [21] On the basis of their description, the NBI cartographer made a drawing of petitioner showing a dominant mole between his eyes. [22] As it turned out, petitioner has no mole but only a scar between his eyes. Moreover, he is 5'8 1/2" and not 5'3" tall. There is a big difference between a mole and a scar. A scar is a mark left in the skin by a new connective tissue that replaces tissue injured. [23] On the other hand, a mole is a small often pigmented spot or protuberance on the skin. [24] If indeed Madaraog and Quintal had a good look at petitioner during the robbery, they could not have erroneously described petitioner. Worthy to note, petitioner was not wearing any mask in the occasion. Madaraog's attempt to explain her erroneous description does not at all convince, viz:

X X X X X X X X

"Q :

We come now to the third person 'iyong namang isa ay mga 28 o 29 ang edad, mga 5'2" o 5'3" ang taas, payat, medyo kulot ang buhok at maiksi at mayroong malaking bilog na nunal sa pagitan ng kilay sa noo. Mahaba at malantik ang pilikmata,' who is that?

Interpreter: Witness referring to Exhibit "J-3."

Q :

Madam witness where is that round mole that appears in the two eyebrows of the person?

A :

It is probably the cartographer that made a mistake.

Q :

I am referring to you now Exhibit "J." I call your attention to that black rounded figure at the middle of the bridge of the nose between the two eyebrows, what was that represent?

A :

A mole, sir." [25]

X X X X X X X X

"Q :

Among the four drawings prepared by the cartographer section of the NBI, you will agree with me Madam Witness that it is only on Exhibit "J" when that rounded mole appears?

A :

No sir, it is the third one." [26]

x x x x x x x x

"Q :

You did not call the attention of the NBI that the third one whom you just identified as Exhibit "J-3" did not bear that rounded mole as mentioned by you, did you?

A :

I did not remember.

Q :

Why did you not remember having called the attention of the NBI to that deficiency in the drawing?

A :

I was not able to call the attention of the NBI (sic) because there were four of us who made the description."
[27]

Secondly, the trial court and the respondent appellate court unduly minimized the importance of this glaring discrepancy in the identification of the petitioner. The trial court resorted to wild guesswork. It ruled:

x x x x x x x x

"[T]he court has observed that Alvin has a prominent scar in between his two (2) eyebrows. It is not within the realm of improbability that Alvin covered up that scar with a black coloring to make it appear that he has a 'nunul' which was therefore the one described by Jovina and, which reinforces her testimony that she had a good eye view of Alvin from the start of the robbery to its conclusion." [28]

This is a grave error. The trial court cannot convict petitioner on the basis of a deduction that is irrational because it is not derived from an established fact. The records do not show any fact from which the trial court can logically deduce the conclusion that petitioner covered up his scar with a black coloring to make it appear as a mole. Such an illogical reasoning cannot constitute evidence of guilt beyond reasonable doubt. This palpable error was perpetrated by respondent appellate court when it relied on the theory that this "fact" should not be disturbed on appeal because the trial court had a better opportunity to observe the behavior of the prosecution witnesses during the hearing. This is a misapplication of the rule in calibrating the credibility of witnesses. The subject finding of the trial court was not based on the demeanor of any witness which it had a better opportunity to observe. Rather, it was a mere surmise, an illogical one at that. By no means can it be categorized as a fact properly established by evidence.

And thirdly, corroborating witness Barbieto has serious lapses in her testimony that diluted her credibility, thus:

x x x x x x x x

"Q:

I am showing to you Exhibit "M" and please point to this Honorable Court that portion where the accused (Alvin Tuason) allegedly asked from you the price of that plastic pack of ice.

A :

I did not state it in my statement.

Q :

Why did you say a moment ago that you place it there (Sinumpaang Salaysay)?

A :

But that is the truth, sir.

Q :

I am not asking you the truth or falsehood x x x I am only asking you why you said a moment ago that that portion of your testimony now is incorporated in Exhibit "M."

A :

[B]ecause they asked the price of the ice." [29]

x x x x x x x x x

"Q :

After reading Exhibit "M," did you or did you not call the attention of the investigator that some of your narrations were not incorporated therein?

A :

No, I did not because he did not ask me.

Q :

[Y]ou did not come forward to volunteer that some portions of your narration were not incorporated therein?

A :

[T]he investigator knew it.

Q :

You mean to tell the Honorable Court that after reading Exhibit "M," the NBI investigator knew that there were some lapses or omissions in your statement?"

A :

It's up to the investigator." [30]

Barbieto is a school teacher and the kind of excuses she proffered does not enhance her credibility. Moreover, she and Quintal merely testified they saw petitioner within the vicinity where the crimes were committed. By itself, this circumstance cannot lead to the conclusion that petitioner truly committed the crimes at bench. Petitioner, we

note, lives in the same vicinity as the victim. To use his words, he lives some six (6) posts from the house of Torres. His presence in the said vicinity is thus not unnatural.

The doubtful identification of petitioner was not at all cured by the process followed by the NBI agents when petitioner was pointed to by Madaraog and the other prosecution witnesses in their headquarters. Madaraog's identification of petitioner from a line-up at the NBI was not spontaneous and independent. An NBI agent improperly suggested to them petitioner's person. Petitioner thus testified:

x x x x x x x x

"Q :

Mr. Witness (Alvin Tuason) do you know of any reason why these two witnesses in the persons of Jovina Madaraog Torres and Mary Barbieto would be testifying in the manner that they did against you?

A :

At the NBI, I saw them with the NBI agent. After the agent pointed at me, later on they also pointed at me."
[31]

On cross-examination, he declared:

x x x x x x x x

"Q :

Do you know the reason why they testified and pointed to you as one of the robbers of July 19, 1988?

A :

Because when I was at the NBI, the NBI agent pointed at me.

Q :

Did you see them at the NBI when they pointed at you?

A :

They were outside a room where there was a glass window.

Q :

So you can see those persons outside the room?

A :

Yes, sir.

Q :

When they pointed you and identified you where there other person with you when you were lined up during that time?

A :

In the second line I was in the line-up.

Q :

When was the first time they pointed you as one of the suspects?

A :

In the Office of the Chief Unit there, to the third floor of the NBI building." [32]

This damaging testimony of the petitioner was not rebutted by the prosecution. The NBI agent present during the identification of petitioner was not presented to belie petitioner's testimony. Consequently, the identification of the petitioner in the NBI headquarters is seriously flawed. According to writer Wall, the mode of identification other than an identification parade is a show-up, the presentation of a single suspect to a witness for purposes of identification. Together with its aggravated forms, it constitutes the most grossly suggestive identification procedure now or ever used by the police. [33]

The respondent appellate court, however, dismissed this claim of petitioner as self-serving. Again, the ruling misconstrues the meaning of self-serving evidence. Self-serving evidence is not to be literally taken as evidence that serves one's selfish interest. Under our law of evidence, self-serving evidence is one made by a party out of court at one time; it does not include a party's testimony as a witness in court. It is excluded on the same ground as any hearsay evidence, that is the lack of opportunity for cross-examination by the adverse party, and on the consideration that its admission would open the door to fraud and to fabrication of testimony. On the other hand, a party's testimony in court is sworn and affords the other party the opportunity for cross-examination. [34] Clearly, petitioner's testimony in court on how he was identified by the prosecution witnesses in the NBI headquarters is not self-serving.

Petitioner's main defense is alibi. He professed that on July 19, 1988 he was mixing dough at TipTop Bakeshop from 7:00 o'clock in the morning till 1:00 o'clock in the afternoon. With the usual traffic jam, it takes him two (2) hours to commute from Lagro to Tondo. It was thus physically impossible for him to be at the locus criminis. He said he learned about the robbery thru his neighbor three (3) days thereafter. He did not flee. He was arrested by the NBI agents more than one (1) month after the crimes were perpetrated.

Angeli Tuason's corroborative testimony established that her brother had an eye examination on July 17, 1988 [35] and she reminded him to work early on July 19, 1988 which he did.

Judges should not at once look with disfavor at the defense of alibi. Alibi should be considered in the light of all the evidence on record for it can tilt the scales of justice in favor of the accused. [36] In *People vs. Omega*, [37] we held:

"Although alibi is known to be the weakest of all defenses for it is easy to concoct and difficult to disprove, nevertheless, where the evidence for the prosecution is weak and betrays lack of concreteness on the question of whether or not the accused committed the crime charged, the defense of alibi assumes importance."

The case at bench reminds us of the warning that judges seem disposed more readily to credit the veracity and reliability of eyewitnesses than any amount of contrary evidence by or on behalf of the accused, whether by way of alibi, insufficient identification, or other testimony. [38] They are unmindful that in some cases the emotional balance of the eyewitness is disturbed by her experience that her powers of perception becomes distorted and her identification is frequently most untrustworthy. Into the identification, enter other motives, not necessarily stimulated originally by the accused personally - the desire to requite a crime, to find a scapegoat, or to support, consciously or unconsciously, an identification already made by another. [39]

IN VIEW HEREOF, the Decision of December 16, 1993 is REVERSED and SET ASIDE and petitioner Alvin

Tuason is ACQUITTED. No costs.

SO ORDERED.

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

- [1] Judge Jaime N. Salazar, Jr., Presiding, NCJR, Branch 103.
- [2] Criminal Case No. Q-88-397, Original Records, pp. 3-5.
- [3] Criminal Case No. Q-88-396, Original Records, p.1.
- [4] T.S.N. March 20, 1989.
- [5] Id., p. 9.
- [6] Ibid.
- [7] Id., p. 10.
- [8] Id., pp. 13-14.
- [9] Exhibit "J."
- [10] T.S.N. July 5, 1989, p. 3.
- [11] T.S.N. September 29, 1989, p. 3, 6-7.
- [12] Flour-mixer, baker, messenger, thirty-one (31) years old, married, and a resident of Block 27; Lot 13, Lagro Subdivision, Novaliches, Quezon City. T.S.N. January 29, 1990, p. 3.
- [13] Id., p. 11.
- [14] T.S.N. January 29, 1990, pp. 12-14.
- [15] T.S.N. March 12, 1990, pp. 3, 5.
- [16] Joint Decision of May 14, 1990, Rollo, p. 56.
- [17] Abad Santos, Quirino D. Jr., J. ponente, Cui, Emeterio C., and Lagamon, Alfredo J., JJ., concurring, Rollo, pp. 88-94.
- [18] Id., p. 105.
- [19] See *People vs. Escalante*, G.R. No. 10663, December 1, 1994.
- [20] Annex "G."
- [21] Annex "K."
- [22] Exhibit "J."
- [23] Webster's Third New International Dictionary, 1970 ed., p. 2025.
- [24] The Merriam-Webster Dictionary, 1974 ed., p. 452.
- [25] T.S.N. May 24, 1989, p. 9.

- [26] Id., p. 10.
- [27] Id., p. 11.
- [28] Court of Appeals Decision, pp. 4-5; Rollo, pp. 91-92.
- [29] T.S.N. September 29, 1989, pp. 19-20.
- [30] Id., pp. 21-22.
- [31] T.S.N. January 29, 1990, p. 19.
- [32] T.S.N. February 6, 1990, pp. 12-14.
- [33] See Louisell, David W., Kaplan, John, and Waltz, Jon R., Cases and Materials on Evidence; Wall, Eye-witness Identification in Criminal Cases, 1968 ed., p. 1263.
- [34] Moran, Manuel V., Comments on the Rules of Court, Vol. 5, 1980 ed., p. 222 citing National Development Co., vs. Workmen's Compensation Commission, L-21724, April 27, 1967, 19 SCRA 861.
- [35] T.S.N. February 6, 1990, p. 6
- [36] See People vs. Jalon, G.R. No. 93729, November 13, 1992, 215 SCRA 680.
- [37] No. L-29091, April 14, 1977, 76 SCRA 262.
- [38] Supra., Borchard, Convicting the Innocent, p. 1230.
- [39] Id.

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