

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. TITO DATAHAN, LEONCIO DATAHAN, CENEN COSCOS, NARCISO LUSICA AND RUFO LUSICA, ACCUSED-APPELLANTS.*G.R. Nos. 77107-08. January 21, 1988*

Ponente: CRUZ, J.

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The last supper Vedasto Piscos had with his wife Librada— although neither of them realized it then — was on July 15, 1984, in Barangay Bayong, Guindulman, Bohol. After the repast, as he recalls, Librada went to the kitchen on the first floor to wash the dishes while he relaxed in a hammock upstairs, savoring the quiet. The couple lived alone. Hearing his dog barking, Vedasto went down to see why and was accosted by two men, one of whom suddenly hit him in the body and head, causing him to run away some twenty meters before he fell unconscious. When he regained consciousness later at the Bohol Provincial Hospital, his house was gone, burned to the ground, and his wife was dead. The 65-year old woman had been burned with the house.[1] Upon questioning, Vedasto gave a statement in which he recounted the events of the tragic night and identified his assailants.[2]

In due time, separate informations for robbery with homicide, frustrated homicide and arson were filed against five persons, including one then (as now) at large.[3] A joint trial was held of all three cases. Of those tried, two were acquitted of all charges for insufficiency of the evidence.[4] The herein accused-appellants were also cleared of the first charge of robbery with homicide but held guilty of the crimes of frustrated homicide and arson.* As the penalty imposed upon them for the latter offense was death, the decision of the trial court has been elevated to us on automatic review.

In challenging their conviction, the accused-appellants contend that the trial court erred in not giving credence to the alibis which they claim proved that they could not have been at the scene of the crimes when they were committed. They also decry the admission of the testimony of the prosecution witnesses, particularly of Vedasto Piscos and Rolando Betonio, the former for being inconsistent and the latter for being biased and incredible.

According to Vedasto Piscos, the man who hit him on that fatal evening was Tito Datahan, who was accompanied then by Cenen Coscos.[5] Datahan lived in the same barangay as he in Bayong,[6] and Coscos lived in the neighboring barangay of Biabas, also in the municipality of Guindulman.[7] Piscos claimed to have known each of them for twenty years,[8] so there cannot be any question here of mistaken identity.

Rolando Betonio also testified that he knew both the accused- appellants, who lived about two kilometers only from the Piscos house,[9] so there can be no occasion for mistaken identity here either. Rolando said that as he approached the burning house that night of July 15,1984, he saw Datahan and Coscos, together with their other co-accused, hiding behind a nearby dike and watching the fire.[10] It was he who discovered the unconscious Vedasto some twenty meters from the house, after being led to him by Rufo Lusica.[11]

Alfredo Datahan, the Barangay captain, declared that he took Vedasto Piscos to the emergency hospital in Jagna before the latter was transferred to the Bohol Provincial Hospital.[12] In company with the municipal mayor, this

witness returned the following morning to the burned area and discovered there the charred remains of Librada Piscos.[13]

In his defense, Tito Datahan alleged alibi, saying he was in his house with his wife and children from 5 o'clock in the afternoon of July 15, 1984, until he went to sleep, waking up the following morning at about 5 o'clock.[14] He claimed that after his arrest on July 20, 1984, he was manhandled by the police to coerce him into confessing the crimes against the Piscos spouses and revealing the names of his companions.[15]

For his part, Coscos claimed that on the day in question, he was in Barangay Biabas, about three kilometers away from Barangay Bayong, watching the basketball games from 2 o'clock in the afternoon. From 6 o'clock to 9 o'clock in the evening, he was in the store of Eleuterio Mahinay where he had sought shelter from the rain along with several other persons. After the rain, he went home, took his supper and then slept until the following morning.[16]

The prosecution presented in rebuttal two policemen who denied the manhandling alleged by Datahan[17] and one witness who testified it did not rain in Biabas on July 15, 1984,[18] as claimed by Coscos.

Alibi is an inherently weak defense and will be rejected in the face of the positive identification of the accused pleading this excuse. So it must fail in this case in view of the testimony given by Vedasto Piscos, who was the victim of the attack made by Datahan and Coscos, and by Rolando Betonio, who saw the accused-appellants hiding behind the dike when the fire was raging.

While it is true that there were inconsistencies in the declarations of Vedasto Piscos, they do not detract from the credibility of his testimony in its totality. It must be remembered that this witness was already 72 years old[19] when he testified in 1985 of the events that transpired almost a year earlier. Although he could not accurately remember every detail of that harrowing night, there was certainly no fuzziness about the most important part of his testimony, which is the identity of the persons who attacked him.

As for Rolando Betonio, the defense contends that his motive in testifying against the accused-appellants is suspect because of his hostility toward Leoncio Datahan, one of the original co-accused, as a result of a previous altercation in 1983 in which Betonio threatened revenge on him someday.[20] Notably, however, Betonio's declaration that he saw Tito Datahan and Coscos hiding behind the dike during the fire jibed with Vedasto Piscos' testimony that the two were also together that same night when he was struck unconscious by Tito Datahan.

There is no direct evidence linking the accused-appellants to the arson but we agree with the trial court in finding them guilty thereof in the light of the several revealing circumstances established by the prosecution. Thus, on the night in question, Vedasto Piscos was assaulted by Datahan and Coscos and fell unconscious after running away from them; while his house was burning, he was found by Rolando Betonio and Alfredo Datahan still unconscious; on that same occasion, Rolando Betonio saw the accused-appellants hiding behind the dike and watching the fire; and after the house was burned the charred body of Librada Piscos was found in the burned area. All of these circumstances point unmistakably to the perpetration of the arson by Datahan and Coscos, whom Vedasto Piscos pointed to as his assailants on the night his house was burned.

It is unlikely that after having attacked Vedasto and rendered him unconscious, the two assailants would have voluntarily desisted and done nothing more. It is more believable that, having rendered him defenseless, the two proceeded with their original plan (whatever it was) that ultimately led to the burning of the house and the death of Librada Piscos. The connection between the attack on Vedasto Piscos and the burning of his house minutes later is too close and obvious. It can lead only to the inevitable conclusion that the man who attacked him were the same persons who burned his house and killed his wife.

We agree that there was conspiracy between Datahan and Coscos as evidenced by their concert of action and community of design.[21] The two were together when Vedasto Piscos was attacked and they were later seen together when the house was burning. If Coscos was not in conspiracy with Datahan, then he should have immediately assisted Vedasto when he was hit by Datahan instead of simply watching the injured man run away from them and fall unconscious. At least, Coscos would have immediately left, avoiding further involvement with Datahan's acts. Instead he remained with Datahan and in fact the two of them were still together when the house was already burning. Datahan and Coscos are clearly conspirators in the commission of the crimes of frustrated homicide and arson and are both guilty thereof in equal degree. [22]

The aggravating circumstances of treachery and nighttime were properly disregarded by the trial court, not having been established by the evidence of record. The penalties for the crimes of frustrated homicide[23] and arson[24] were correctly imposed except that the death sentence must now be reduced to reclusion perpetua in accordance with the new Constitution.

It is truly sad that the Piscos spouses, who had grown old together in what was apparently an amiable life, should be wrenched from each other in such a violent and grisly manner by the unfeeling predators who were not deterred at all by at least the age of their defenseless victims. This elderly couple might have been spared the cruelty of their final separation so they could live their few remaining years together in peaceful reminiscences of the past they had shared and also in resigned preparedness for the fast approaching future. As fate would have it, they were to be denied that placid end by the radiant flames that, while lighting their last night together, inflicted upon both of them an irretrievable and melancholy darkness.

WHEREFORE, the appealed judgment is AFFIRMED as above modified, without any pronouncement as to costs.

SO ORDERED.

Teehankee, C.J., Yap, Fernan, Narvasa, Melencio-Herrera, Gutierrez, Jr., Paras, Feliciano, Gancayco, Padilla, Bidin, Sarmiento, and Cortes, JJ., concur.

[1] TSN, pp. 5-12.

[2] Record on Appeal, p. 4, Exh. "B".

[3] Rufo Lusica.

[4] Leoncio Datahan & Narciso Lusica (Rollo, p. 42).

* By Judge Mercedes Gozo-Dadole.

[5] TSN, pp. 9-10.

[6] Ibid., p. 3.

[7] Id., p. 4.

[8] Id., pp. 3-4.

[9] Id., pp. 41-42.

[10] Id., pp. 45-47.

[11] Id, p. 46.

[12] Id., p. 87.

[13] Id.pp. 89-90.

[14] Id., pp. 303-306.

[15] Id., pp. 309-313.

[16] Id., pp. 203-206.

[17] Henry Salda & Floro Felicia (TSN, pp. 325-327: 336-338).

[18] Eduardo Pabon (TSN, p. 351).

[19] TSN, p. 2-A.

[20] Appellant Coscos' Brief, p. 79.

[21] People v. Rosas, 149 SCRA 464; People v. Patog, 144 SCRA 429; People v. Petenia, 143 SCRA 361; People v. Sinaw-ay, 138 SCRA 221; People v. Arbois, 138 SCRA 24; People v. Serrano, 136 SCRA 399; People v. Soriano, 134 SCRA 542.

[22] People v. Gapasin, 145 SCRA 178; Pring v. Court of Appeals, 138 SCRA 185; People v. Garcia, 105 SCRA 325; People v. Guevarra, 94 SCRA 642; People v. Pilonas, 84 SCRA 167

[23] Indeterminate penalty of imprisonment from 2 years, 4 months, and 1 day of prison correctional as minimum to 8 years and 1 day of prison mayor as maximum

[24] Death

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