

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RICHARD VIRAY AND ALFREDO DOMINGO, ACCUSED-APPELLANTS.

G.R. Nos. 87184-85. October 03, 1991

Ponente: SARMIENTO, J.

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SARMIENTO, J.:

These are two appeals separately interposed by Richard Viray and Alfredo Domingo from the decision of the Regional Trial Court of Manila, Branch XLIX,[1] rendered on July 16, 1988, finding them both guilty beyond reasonable doubt of the crime of robbery with homicide. The dispositive portion of the joint decision reads:

WHEREFORE, the Court finds the Accused Richard Viray in Criminal Case No. 87-58929-SCC and the Accused Alfredo Domingo in Criminal Case No. 87-59503 guilty beyond reasonable doubt as principals for the crime of "Robbery with Homicide", defined in and punishable by Article 294, paragraph 1 of the Revised Penal Code and appreciating against them the aggravating circumstance of abuse of superior strength, hereby metes on each of them the penalty of RECLUSION PERPETUA, with all the accessory penalties of the law, and hereby orders them to:

(a) Return to the heirs of the deceased the gold ring, gold necklace, citizen watch, clutch bag and P500.00 cash stolen by them from the deceased or, if they can no longer return the same, to pay the total values [sic] thereof in the amount of P2,550.00, plus the said P500.00;

(b) Pay, jointly and severally actual damages in the amount of P6,800.00;

(c) Pay, jointly and severally to the heirs of the deceased the amount of P20,000.00 as moral damages and P30,000.00 as damages;

(d) Pay, jointly and severally P325,874.82 to Geranio Eugenio and/or the heirs of the deceased, which represents the amount lost by them because of the untimely demise of the deceased;

(e) Pay the costs of suit.

The period during which the Accused were detained during the pendency of these cases are credited to them in full provided that they agreed in writing to abide by and comply strictly with the rules and regulations of the City Jail.

SO ORDERED.[2]

Two separate informations for robbery with homicide were filed, one on November 13, 1987 by Asst. Fiscal Laura Biglang-awa against Richard Viray y Bayani alias Archie, 26 years old, and the other on December 15, 1987 by Asst. Fiscal Panfilo L. Pabelonia, Jr. against Alfredo Domingo y Feliper alias Al, 24 years old. Arising from the same incident, the two cases were later consolidated and tried jointly. Both accused-appellants, when arraigned, entered a plea of not guilty.

The prosecution's version of the facts, as submitted by the Solicitor-General, are as follows:

At about 11:00 o'clock in the evening of October 5, 1987, Merle Salinas, an ambulant cigarette vendor, was sleeping in the front seat of her cousin's passenger-type jeepney, then parked beside her sister's store by the Estero de San Miguel, facing Legarda Street. She was awakened by a commotion in front of the hood of the jeep she was sleeping in. She sat up and saw a person who was leaning on the jeep's hood, and being pummeled with fist blows and kicked on different parts of his body by four men. The person being mauled was later identified as Orlando Eugenio. Orlando's tormentors, namely appellant Richard Viray, appellant Alfredo Domingo, Bong Domingo, and one she knew as Tacquio, were known to Merle Salinas as all of them used to buy cigarettes from her (TSN, February 1, 1988, 11-12).

While Orlando Eugenio was being mauled, Alfredo Domingo took his necklace while Bong Domingo took his clutch bag (TSN, January 14, 1988, 11-12). Appellants Viray and Domingo continued pummeling Eugenio. As Orlando Eugenio lay on the ground, he bent his knees and covered his face and head with his hand and fist pleading "Hindi ako, Hindi ako." (TSN, March 17, 1988, 18-19). Appellant Viray then lifted Eugenio and boxed him causing the latter to fall into the estero. Appellants and his companions left the scene and proceeded towards Loreto Street. Merle Salinas saw the body of Eugenio submerge into the water of the estero, then surface and finally sink. (Supra, 16, 19, 22).

Subsequently, Merle's sister opened her store and immediately asked Merle what the commotion was all about. Merle answered her that a man whom she does not know was mauled, lifted and boxed which caused him to fall into the estero. Minutes later, some policemen, responding to the call of some person within the neighborhood arrived (supra., 27-31). Merle Salinas informed the policemen of what she witnessed but did not identify the offenders (TSN, February 1, 1988, 32-33). Between the hours of five and six o'clock in the morning of October 7, 1987, a body was seen floating on Estero de San Miguel. When the body was fished out of the water with a bamboo pole, Merle Salinas noticed that the shirt of the deceased was the same as that worn by the person whom she saw fall into the estero while being mauled by the appellants and their companions (TSN., March 17, 1988, 43, 46).

Three persons were wrongly arrested in connection with the death of Orlando Eugenio. Taking pity on them, Merle Salinas, upon the information that the deceased Eugenio was an employee of the Tanodbayan, proceeded thereat to give her statement (TSN, April 12, 1988, 112-115). However, Merle Salinas was referred to the Police Headquarters where she executed a sworn statement identifying appellants and their two other companions as the persons responsible for the death of Orlando Eugenio (TSN, February 1, 1988, 4, 7, 10, 11-12).[3]

A postmortem examination of the cadaver of Orlando Eugenio conducted on October 7, 1987 by. Dr. Alberto Garcia of the Medico-Legal Office of the NBI showed the following:

POSTMORTEM FINDINGS

Body, in early stage of post-mortem decomposition.

Abrasions: 3.0 x 1.2 cm., right cheek; 2.2 x 2.0 cm., face, right side; 5.0 x. 4.0 cm., face, left side; 1.5 x. 1.0 cm., mandibular region; 6.0 x 2.5 cm., left mammary region; 2.0 x, 1.0 cm., right mammary region; 7.5 x 0.8 cm., left anterior lambar region; 4.0 x 2.8 cm., left elbow; 5.0 x 2.2 cm., right hand, dorsum; 3.0 x 2.0 cm., and 3.5 x 1.0 cm., left lambo-sacral region; 2.0 x 1.5 cm., right thigh, antero-lateral aspect, lower thirds; 5.5 x 4.0 cm., right leg, anterior aspect, upper thirds; 3.5 x 1.2 cm., left leg, anterior aspect, upper thirds; 2.0 x 1.3 cm., left leg, antero-medial aspect, middle thirds; 2.0 x 1.0 cm., posterior to left malleolus, lateral aspect.

Contuse–abrasions; 4.0 x 3.2 cm., frontal region, right side; 9.3 x 2.2 cm., right shoulder, anterior aspect; 2.0 x 0.6 cm., left, supramammary region; 8.0 x 6.2 cm., left arm, postero–lateral aspect, middle thirds; 4.5 x 3.2 cm., right posterior thoraco–lumbar region; 4.0 x 3.0 cm., right forearm, posterior aspect, lower thirds.

Lacerated wounds: 2.3 cm., right temple; 0.8 cm., upper lip, right side.

Hematoma, scalp; frontal region, right side; left peristal region.

Hemorrhage, subdural, extensive.

Brain and other visceral organs, with beginning decomposition.

Stomach, about 1/3 filled with pinkish and brownish food materials and fluid.

CAUSE OF DEATH: Hemorrhage, intracranial,, traumatic.[4]

Accused–appellant Richard Viray denies any involvement in the mauling incident. In his brief, he states his defense, to wit:

The accused Richard Viray, 20 years old, married, an Industrial Engineering graduate and a resident of 240 Gov. Forbes St., Sampaloc, Manila testified that on October 5, 1987 at about 9:00 P.M., he stayed in their house. At 11:00 P.M., he went to eat in a carinderia at the corner of Sta. Teresita and Legarda Streets. While at the said carinderia, he noticed a commotion along Legarda Street. Feeling curious, he went there to find out what happened. Somebody informed him that a person fell into the creek. Inquiring about what really happened, he was told several versions. One version was that a person who was drunk fell into the creek. Another was that a person had a quarrel with somebody. After his inquiry, he went home.

On October 10, 1987 at about 7:00 A.M., some policemen visited him in their house. They invited him to the police headquarters for questioning. But before going there, the police fetched at Legarda Street a woman whom he recognized by her face only. The woman was prosecution witness Merlie Salinas.

When they reached the police headquarter, he was offered a seat and a cup of coffee. The policemen and the woman (Merlie Salinas) were conversing with each other. For his part, the police told him that he was implicated by Merlie Salinas in the incident on October 5, 1987. He told the police that there is no truth in the allegation of Merlie Salinas.

Likewise, he branded as a lie the testimony of Merlie Salinas in court that he was one of those persons who mauled the victim on October 5, 1987. (TSN, pp. 2-21, June 9, 1988)[5]

Accused-appellant Alfredo Domingo, on the other hand, has his own alibi, which corroborate's the material averments of accused-appellant Viray's defense. He testified that in the evening of October 5, 1987, at past 11:00 o'clock, he went to the "Legarda rotonda" to buy balut for his wife who was conceiving. While buying balut, he saw a crowd gathered at Legarda Street. He went nearer and saw accused-appellant Viray. After asking around what the commotion was all about, both Domingo and Viray were informed that a person had fallen into the estero. However, they were told different versions as to the reason why the person fell. After their curiosity were satisfied, they returned to their respective homes.[6]

On December 11, 1987, at around 11:00 o'clock in the morning, four (4) policemen went to his house and invited him to the police headquarters for questioning.[7] He was included in a police line-up and was pointed to by Merle Salinas. He was then detained for nine (9) days at the Police headquarters, and thereafter brought to the Manila City Jail.[8]

Inside the Manila City Jail, he was approached by a co-detainee whom he later came to know as Perfecto Salinas, Jr., brother of prosecution witness Merle Salinas, who remarked: "ganti-gantihan lang tayo," after being informed that accused-appellant Alfredo Domingo was the nephew of the barangay tanod chief who was instrumental in the former's arrest and confinement.[9] However, Perfecto Salinas, Jr., denied having uttered such remarks.[10]

As earlier mentioned, the two accused, each represented by his own counsel, interposed separate appeals. Accused-appellant Richard Viray assails the decision of the trial court for giving credence to the unreliable

testimony of alleged eyewitness Merle Salinas, for convicting him of the complex crime of robbery with homicide, and in not acquitting him on reasonable doubt. Accused-appellant Alfredo Domingo, on his part, faults the lower court in failing to give credence to his testimony, and to the motive of Merle Salinas in falsely accusing him. He likewise contends that the trial court erred in giving weight and credence to the inconsistent and baseless testimony of Merle Salinas, in declaring him guilty of the crime robbery with homicide, and in convicting him beyond reasonable doubt.

After a careful study of the evidence on record, the Court holds that the trial court erred in believing Merle Salinas' narration. Accordingly, we acquit both the accused-appellants on reasonable doubt.

Well-recognized is the principle that this Court is restrained from rejecting or even modifying the trial court's factual findings, considering that the latter is in a better position to pass upon the matter of credibility of witnesses.[11] However, the Court will not hesitate to take exception to this rule in order to keep faith with the immutable principle that every criminal conviction must be supported by proof beyond reasonable doubt.[12] The Court takes this exception in the instant case.

We find the uncorroborated testimony of alleged eyewitness Merle Salinas doubtful and uncertain. In her direct examination, she stated:

COURT:

At the time the victim was standing in front of the jeep, the first time you saw him, do you know where these four (4) people who mauled the victim where (sic) at that time?

WITNESS:

They came from the other street. From Loreto Street, Your honor.[13]

However, during the cross-examination, she contradicted herself, to wit:

ATTY. SANCHEZ:

I am going to read a portion of the question propounded to you, and the answer you gave at the beginning of your testimony is that, on page 20 of the transcript of stenographic notes, to wit: QUESTION: You said you noticed them referring to the suspects for the first time they came from Loreto Street and in answer to that question asked of the court from you, you answered, "the first time when I saw them, they came from Loreto Street and after that I slept, sir. I did not know where they went." Now, do you remember having given that answer?

WITNESS:

No, because I did not see them, sir.[14]

In another instance, alleged eyewitness Merle Salinas again retracted in this wise:

FISCAL FORMOSO:

After looking on the river, what did you do after that?

WITNESS:

My sister and I called a policeman, sir.

FISCAL FORMOSO:

Were you able to call a policeman?

WITNESS:

Yes, sir.[15]

On cross-examination, she gave a different answer:

WITNESS:

The answer I gave last time was wrong, because the truth is that, it was our neighbor who called for a policeman, sir.[16]

What takes cake, however, is when this alleged eyewitness, after being apprised of the inconsistencies in her testimony, testified:

WITNESS:

During the time when I testified before this Court I felt very bad. I had fever and I was feeling dizzy, so I did not know what I was saying. x x x (italics supplied).[17]

x x x x x x x x

ATTY. SANCHEZ:

Are you telling the Honorable Court that all your direct testimony at that time were entirely wrong merely because you felt dizzy and you had fever at that time?

WITNESS:

It was only at the last portion of my testimony that I felt dizzy. I was not able to talk to maong [sic], sir.[18]

The Court can not convict on the basis of her testimony alone. While it is undeniable that a crime was committed, based on the findings of the Medico-Legal Officer that at the time the victim fell into the estero, he was no longer breathing,[19] and, therefore, its perpetrators should be punished to the full extent of the law, the testimonies of the alleged eyewitness can not be accorded unreserved acceptance. The uncorroborated and inconsistent testimony of Merle Salinas lacks the credibility necessary to establish the guilt of the accused-appellants beyond reasonable doubt. The lower court has overlooked certain facts and circumstances of substance and value which led to the conviction of the accused-appellants. These are not minor inconsistencies which can be dismissed lightly.

In fact, we even find the testimony of Merle Salinas so unnatural and inconsonant with the Filipino culture as to be believable. The Maria Clara ideal, we think, still clings to the hearts of many Filipino women today, prudent, cautious, demure, and inhibited. For a young woman of 24 years, whose house is just a few meters away, to sleep alone in the dead of night inside a passenger jeepney parked in an ill-lighted street deserves scant consideration. While we do not discount the reality that Merle Salinas, as a cigarette vendor, has to accept certain risks of the trade, we find it difficult to conceive that she would gamble her personal safety to the extent of exposing herself to sexual assault just to accommodate a piddling sale. Considering the inbred modesty of a Filipino woman, it would be her natural instinct to protect herself and not throw all cautions to the wind. Even the court a quo had reservations.

COURT:

You are a woman. You are still quite young that [sic] way I see it. Why did you not sleep inside the store of your sister?

X X X X X X X X

Why did you not go home and sleep there instead of sleeping in that jeepney because you might be raped there or you might be harmed?[20]

Moreover, we find it difficult to believe that the reason why Merle Salinas did not inform the policemen upon their arrival at the scene of the crime of the identities of the assailants (although she claims she knew them already) "was because I (she) was afraid that the accused might see me (her) and during the time when I (she) was asked questions, there were many people surrounding me (her)."[21] The reason is as good as a lame excuse. She testified that upon the arrival of the policemen at the scene of the crime, she was asked questions as to what happened. She then informed the policemen that a person was mauled and that the person who was mauled fell into the river.[22] If indeed she was afraid that the accused might see her, then she should not have narrated the incident to the responding policemen, nor answer any of their questions.

Furthermore, we do not see any reason why Merle Salinas did not divulge to Geranio Eugenio, father of the victim, the identities of the accused when they talked on October 6, 1987.[23] Again, she failed to disclose the identities of the accused on October 7, 1987, when the body of the victim was fished out from the estero and the investigators were in the area. It was only allegedly on October 9, 1987, that Salinas voluntarily went to the Police Headquarters and informed the investigators who the assailants were.[24] However, Police Investigator Pedro Almero of the Homicide Investigation Unit had this to say:

COURT:

Did you ask Merle Salinas if she tried to get in touch to [sic] any police officer after October 5, 1987 about the incident?

WITNESS:

Yes, sir.

COURT:

When for the first time per your investigation did Merle Salinas contact any police officer in connection with the mauling?

WITNESS:

October 10, 1987, Your Honor.[25]

Certainly, we can not sustain the conviction of the appellants on the basis of a testimony of a single witness, who after creating her own web of contradictions, testified in open court that she did not know what she was saying. This testimony, to say the least, is shrouded in serious doubt and falls short of the reliability essential for conviction. The proof of the appellants' participation in the crime charged is sourced only from the uncorroborated, confusing, vacillating, and uncertain testimony of an alleged eyewitness, and considering that such testimony lacks credibility, the case of the prosecution must fail.

The accused-appellants, for their defenses, interposed their respective alibis. These alibis, notwithstanding their inherent weakness, must not be totally disregarded. We have ruled that the defense of alibi assumes importance when faced with the uncertainties and inconsistencies of the prosecution's evidence.[26] And even if it were true that such defenses were not satisfactorily proven, this fact alone does not justify a judgment of conviction.[27] Weak as this defense may be, it is not and can not be the basis of a conviction.[28]

Furthermore, we have repeatedly declared that every conviction must be based not on the weakness of the defense but on the strength of the prosecution. The alibi as a defense may be weak, but even weaker is the evidence of the prosecution.[29] The burden of proving the offense charged rests on the prosecution. Failing in its legal duty in proving its case, the prosecution can not later rely on the weakness of the defense to secure a conviction.

Under the Constitution, the accused has in his favor the presumption of innocence. Unless his guilt is demonstrated beyond reasonable doubt, he is entitled to an acquittal. The requirement of proof beyond reasonable doubt requires moral certainty of guilt, "a certainty that convinces and satisfies the reason and conscience of those who are to act upon it." In the present case, the requirement of moral certainty has not been met.

WHEREFORE, the appealed decision is REVERSED. Accused-appellants are ACQUITTED on reasonable doubt.

Melencio-Herrera, (Chairman), Paras, Padilla, and Regalado, JJ., concur.

[1] Hon. Romeo J. Callejo, Presiding Judge.

[2] Rollo, 57-58.

[3] Id., 157; 171.

[4] Id., 26-27, citing Exhibits "E" and "E-1".

[5] Id., 97-98.

[6] TSN, June 14, 1989, 5-6.

[7] Id., 7.

[8] Id., 9.

[9] Id.

- [10] TSN, June 16, 1988, 11.
- [11] *People v. Indaya*, G.R. No. 90296, April 25, 1991; *People v. de Guia*, G.R. No. L-49825, May 14, 1990, 185 SCRA 336; *People v. Almenario*, G.R. No. 66420, April 17, 1989, 172 SCRA 268.
- [12] *People v. Aldana*, G.R. No. 81817, July 27, 1989, 175 SCRA 635; *People v. Mejias*, No. 79677, November 28, 1988, 168 SCRA 33; *People v. Alto*, Nos. L-18660-61, November 29, 1968, 26 SCRA 342.
- [13] TSN, January 11, 1988, 18.
- [14] TSN, February 1, 1988, 44-45.
- [15] TSN, January 11, 1988, 38.
- [16] TSN, March 10, 1988, 51.
- [17] TSN, February 1, 1988, 26.
- [18] *Id.*, 43.
- [19] TSN, April 19, 1988, 70-77.
- [20] TSN, February 1, 1988, 22-23.
- [21] TSN, April 12, 1988, 109-110.
- [22] TSN, January 11, 1988, 39-41; February 1, 1988, 32-33.
- [23] TSN, April 26, 1988, 44-49.
- [24] TSN, February 1, 1988, 6-8.
- [25] Note from the publisher: missing footnote text in the official copy obtained from the Supreme Court.
- [26] *People v. Padilla*, G.R. No. 72709, August 31, 1989, 177 SCRA 129.
- [27] *People v. Ola*, No. L-47147, July 3, 1987, 152 SCRA 1.
- [28] *People v. Boneo*, G.R. No. 74522, June 30, 1989, 174 SCRA 612.
- [29] *People v. Llaneras*, G.R. No. 89117, June 19, 1991; *People v. Hizon*, G.R. No. 51449, December 20, 1989, 180 SCRA 364; *People v. Boneo*, *supra*.

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