

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
RESURRECCION CARIÑO AND MANUEL SABAL,
ACCUSED-APPELLANTS.**

G.R. Nos. 92144-49. December 18, 1992

Ponente: CRUZ, J.

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CRUZ, J.:

Seven men went on a spree one night, leaving a trail of robberies and one dead body. The accused-appellants were apprehended and charged with the crime as described below. Convicted after trial, they have come to this Court with the insistent plea that they be absolved of all participation in the said offenses.

The informations filed against accused-appellants Resurreccion Cariño and Manuel Sabal, together with Roger Cariño, Dodong Cariño, Toto Cantiller, Nonoy Cariño and Felimon Jimenez, read as follows:

1) Criminal Case No. R-2374 -

That on or about the 1st day of October, 1987, at around 12:30 o'clock midnight, in Sitio Yawi-Yawi II, Barangay Murtha, Municipality of San Jose, Province of Occidental Mindoro, Philippines, and within the jurisdiction of this Honorable Court, the seven (7) accused, being then all armed with deadly weapons, with intent to gain and by means of intimidation of person, conspiring and confederating together and helping one another, did then and there willfully, unlawfully and feloniously take, steal and carry away, without consent of the owner thereof, the following personal properties, to wit:

Three (3)

fighting cocks - P1,500.00

One (1) pc. bolo - 130.00

One (1) pc. belt - 120.00

belonging to Conrado Catubig and with a total value of One Thousand Seven Hundred Fifty (P1,750.00) Pesos, Philippine Currency, to the damage and prejudice of the latter in the aforementioned amount of P1,750.00.

CONTRARY TO LAW. x x x.

2) Criminal Case No. R-2375 ?

That on or about the 30th day of September, 1987, at around 11:30 o'clock in the evening, in Sitio Yawi-Yawi II, Barangay Murtha, Municipality of San Jose, Province of Occidental Mindoro, Philippines, and within the jurisdiction of this Honorable Court, the seven (7) accused, being then all armed with deadly weapons, with intent to gain and by means of intimidation of person, conspiring and confederating together and helping one another, did then and there willfully, unlawfully and feloniously take, steal and carry away, without consent of the owner thereof, the following personal properties, to wit:

Assorted dry goods

belonging to Ferciliza dela Cruz and with a total value of Two Hundred Ninety (P290.00) Pesos, Philippine Currency, to the damage and prejudice of the latter in the aforementioned amount of P290.00.

CONTRARY TO LAW. x x x.

3) Criminal Case No. R-2376 –

That on or about the 30th day of September, 1987, at night time, in Sitio Yawi-Yawi II, Barangay Murtha, Municipality of San Jose, Province of Occidental Mindoro, Philippines, and within the jurisdiction of this Honorable Court, the seven (7) accused, being then all armed with deadly weapons and with intent to gain, conspiring and confederating together and helping one another, did then and there willfully, unlawfully and feloniously, by means of violence against person, take, steal and carry away, without the consent of the owner thereof, the following personal properties, to wit:

One Titus watch -

P1,700.00

One Pair of shoes -

500.00

One long barrel airgun -

2,000.00

belonging to Oscar Villaplaza and with a total value of Four Thousand Two Hundred (P4,200.00) Pesos, Philippine Currency, to the damage and prejudice of the legal heirs of the said Oscar Villaplaza, and by reason of or on the occasion of the said robbery and for the purpose of enabling them to take, steal and carry away the articles above-mentioned, the accused, pursuant to the aforesaid conspiracy, did then and there willfully, unlawfully and feloniously, with intent to kill, attack, assault and stab the said Oscar Villaplaza, thereby inflicting upon the latter serious wounds which have been the cause of his untimely death.

CONTRARY TO LAW. x x x

4) Criminal Case No. R-2377 -

That on or about the 30th day of September, 1987, at around 12:00 o'clock midnight, in Sitio Yawi-Yawi II, Barangay Murtha, Municipality of San Jose, Province of Occidental Mindoro, Philippines, and within the jurisdiction of this Honorable Court, the seven (7) accused, being then all armed with deadly weapons, with intent to gain and by means of intimidation of person, conspiring and confederating together and helping one another, did then and there willfully, unlawfully and feloniously take, steal and carry away, without the consent of the owner thereof, the following personal properties, to wit:

Three (3) fighting cock -

1,000.00

Assorted clothings -

800.00

One (1) packbag -

75.00

belonging to Jesus Nazareno, and with a total value of One Thousand Eight Hundred Seventy Five (P1,875.00) Pesos, Philippine Currency, to the damage and prejudice of the latter in the aforementioned amount of P1,875.00.

CONTRARY TO LAW. x x x.

5) Criminal Case No. R-2378 -

That on or about the 1st day of October, 1987, at around 12:15 o'clock midnight, in Sitio Yawi-Yawi II, Barangay Murtha, Municipality of San Jose, Province of Occidental Mindoro, Philippines, and within the jurisdiction of this Honorable Court, the seven (7) accused, being then all armed with deadly weapons, with intent to gain and by means of intimidation of person, conspiring and confederating together and helping one another, did then and there willfully, unlawfully and feloniously take, steal and carry away, without the consent of the owner thereof, the following personal properties, to wit:

Assorted Dry Goods

belonging to Arnolfo Francisco and with a total value of Eighty Eight (P88.00) Pesos, Philippine Currency, to the damage and prejudice of the latter in the aforementioned amount of P88.00.

CONTRARY TO LAW. x x x.

6) Criminal Case No. R-2379 -

That on or about the 30th day of September, 1987, at around 11:00 o'clock in the evening, in Sitio Yawi-Yawi II, Barangay Murtha, Municipality of San Jose, Province of Occidental Mindoro, Philippines, and within the jurisdiction of this Honorable Court, the seven (7) accused, being then all armed with deadly weapons, with intent to gain and by means of intimidation of person, conspiring and confederating together and helping one another, did then and there willfully, unlawfully and feloniously take, steal and carry away, without the consent of the owner thereof, the following personal properties, to wit:

cash money -

P500.00

one knife -

200.00

one jacket -

cordoroy

belonging to Mario Esteves and with a total value of Seven Hundred (P700.00).

CONTRARY TO LAW. x x x.

The accused-appellants pleaded not guilty and trial proceeded only against them because their other co-accused had managed to elude arrest.

On July 21, 1989, Judge Restituto L. Aguilar of the Regional Trial Court of San Jose, Occidental Mindoro, rendered a decision convicting the appellants of the crime of robbery with homicide and of five counts of robbery in band. The dispositive portion reads:

WHEREFORE, in view of the foregoing considerations, judgment is hereby rendered as follows:

1. In Criminal Case No. R-2376, the Court finds the accused Resurreccion (Bebot) Cariño and Manuel Sabal

GUILTY beyond reasonable doubt as principals of the crime of 'Robbery with Homicide' with the aggravating circumstance that it was committed by a band, defined by Article 294 (1), and penalized by reclusion perpetua to death - the penalty of death is now, however, abolished by the New Constitution. Since reclusion perpetua is a single indivisible penalty, it shall be applied regardless of any mitigating or aggravating circumstances that may have attended the commission of the deed (Article 63, Revised Penal Code). Consequently the Indeterminate Sentence Law is not applicable, thus, the penalty to be imposed should still be reclusion perpetua.

In view thereof, the Court hereby sentences each (sic) of the accused Resurreccion (Bebot) Cariño and Manuel Sabal to suffer the penalty of RECLUSION PERPETUA, with accessories provided by law; and to indemnify, jointly and severally, the heirs of the deceased in the total sum of TWENTY THREE THOUSAND SEVEN HUNDRED PESOS (P23,700.00) without subsidiary imprisonment in case of insolvency.

2. In Criminal Case No. R-2374, the Court finds the accused Resurreccion (Bebot) Cariño and Manuel Sabal GUILTY beyond reasonable doubt as principals of the crime of "Robbery In Band" defined in Article 296 of the Revised Penal Code and penalized by prision correccional in its maximum period to prision mayor in its medium period under Article 294 (5) of the same Code, which is four (4) years and two (2) months to ten (10) years. Since there is no aggravating nor mitigating circumstance present, the penalty should be imposed in the medium period which ranges from six (6) years, one (1) month and eleven (11) days to eight (8) years and twenty (20) days. Applying, however, the Indeterminate Sentence Law, each of the said accused should be sentenced to an indeterminate penalty ranging from four (4) years of prision correccional as minimum to eight (8) years and twenty (20) days of prision mayor as maximum.

In view thereof, the Court hereby sentences each of the accused Resurreccion (Bebot) Cariño and Manuel Sabal to suffer the indeterminate penalty of FOUR (4) YEARS of Prision Correccional as minimum to EIGHT (8) YEARS and TWENTY (20) DAYS of Prision Mayor as maximum, with accessories provided by law; and to indemnify the private offended party Conrado Catubig in the sum of ONE THOUSAND SEVEN HUNDRED FIFTY PESOS (P1,750.00), without subsidiary imprisonment in case of insolvency.

3. In Criminal Case No. R-2375, the Court finds the accused Resurreccion (Bebot) Cariño and Manuel Sabal GUILTY beyond reasonable doubt as principals of the crime of 'Robbery In Band' defined in Article 296 of the Revised Penal Code and penalized by prision correccional in its maximum period to prision mayor in its medium period under Article 294 (5) of the same Code, which is four (4) years and two (2) months to ten (10) years. Since there is no aggravating nor mitigating circumstance present, the penalty should be imposed in the medium period which ranges from six (6) years, one (1) month and eleven (11) days to eight (8) years and twenty (20) days. Applying, however, the Indeterminate Sentence Law, each of the said accused should be sentenced to an indeterminate penalty ranging from four (4) years of prision correccional as minimum to eight (8) years and twenty (20) days of prision mayor as maximum.

In view thereof, the Court hereby sentences each of the accused Resurreccion (Bebot) Cariño and Manuel Sabal to suffer the indeterminate penalty of FOUR (4) YEARS of Prision Correccional as minimum to EIGHT (8) YEARS and TWENTY (20) DAYS of Prision Mayor as maximum, with accessories provided by law; and to indemnify the private offended party Fercelesa (sic) dela Cruz in the sum of TWO HUNDRED NINETY PESOS (P290.00); without subsidiary imprisonment in case of insolvency.

4. In Criminal Case No. R-2377, the Court finds accused Resurreccion (Bebot) Cariño and Manuel Sabal GUILTY beyond reasonable doubt as principals of the crime of 'Robbery In Band' defined in Article 296 of the Revised Penal Code and penalized by prision correccional in its maximum period to prision mayor in its medium period under Article 294 (5) of the same Code, which is four (4) years and two (2) months to ten (10) years. Since there is no aggravating nor mitigating circumstance present, the penalty should be imposed in the medium period which ranges from six (6) years, one (1) month and eleven (11) days to eight (8) years and twenty (20) days. Applying, however, the Indeterminate Sentence Law, each of the said accused should be

sentenced to an indeterminate penalty ranging from four (4) years of prision correccional as minimum to eight (8) years and twenty (20) days of prision mayor as maximum.

In view thereof, the Court hereby sentences each of the accused Resurreccion (Bebot) Cariño and Manuel Sabal to suffer the indeterminate penalty of FOUR (4) YEARS of Prision Correccional as minimum to EIGHT (8) YEARS and TWENTY (20) DAYS of Prision Mayor as maximum, with accessories provided by law; and to indemnify the private offended party Jesus Nazareno in the sum of ONE THOUSAND EIGHT HUNDRED SEVENTY FIVE PESOS (P1,875.00), without subsidiary imprisonment in case of insolvency.

5. In Criminal Case No. R-2378, the Court finds the accused Resurreccion (Bebot) Cariño and Manuel Sabal GUILTY beyond reasonable doubt as principals of the crime of 'Robbery In Band' defined in Article 296 of the Revised Penal Code and penalized by prision correccional in its maximum period to prision mayor in its medium period under Article 294 (5) of the same Code, which is four (4) years and two (2) months to ten (10) years. Since there is no aggravating nor mitigating circumstance present, the penalty should be imposed in the medium period which ranges from six (6) years, one (1) month and eleven (11) days to eight (8) years and twenty (20) days. Applying, however, the Indeterminate Sentence Law, each of the said accused should be sentenced to an indeterminate penalty ranging from four (4) years of prision correccional as minimum to eight (8) years and twenty (20) days of prision mayor as maximum.

In view thereof, the Court hereby sentences each of the accused Resurreccion (Bebot) Cariño and Manuel Sabal to suffer the indeterminate penalty of FOUR (4) YEARS of Prision Correccional as minimum to EIGHT (8) YEARS and 20 days of Prision Mayor as maximum, with accessories provided by law; and to indemnify the private offended party Arnolfo Francisco in the sum of EIGHTY EIGHT PESOS (P88.00), without subsidiary imprisonment in case of insolvency.

6. In Criminal Case No. R-2379, the Court finds the accused Resurreccion (Bebot) Cariño and Manuel Sabal GUILTY beyond reasonable doubt as principals of the crime of 'Robbery In Band' defined in Article 296 of the Revised Penal Code and penalized by prision correccional in its maximum period to prision mayor in its medium period under Article 294 (5) of the same Code, which is four (4) years and two (2) months to ten (10) years. Since there is no aggravating nor mitigating circumstance present, the penalty should be imposed in the medium period which ranges from six (6) years, one (1) month and eleven (11) days to eight (8) years and twenty (20) days. Applying, however, the Indeterminate Sentence Law, each of the said accused should be sentenced to an indeterminate penalty ranging from four (4) years of prision correccional as minimum to eight (8) years and twenty (20) days of prision mayor as maximum.

In view thereof, the Court hereby sentences each of the accused Resurreccion (Bebot) Cariño and Manuel Sabal to suffer the indeterminate penalty of FOUR (4) YEARS of Prision Correccional as minimum to EIGHT (8) YEARS and TWENTY (20) DAYS of Prision Mayor, as maximum, with accessories provided by law; and to indemnify the private offended party Mario Esteves in the sum of SEVEN HUNDRED PESOS (P700.00) without subsidiary imprisonment in case of insolvency.

The accused shall, however, be entitled to the full term of their preventive imprisonment, provided, that they shall have agreed in writing to abide with the disciplinary rules and regulations imposed on convicted prisoners; otherwise, each of them shall be credited only four-fifth (4/5) of his preventive imprisonment.

Moreover, the maximum period of service of the above penalties by each of the accused shall in no case exceed forty (40) years, as provided for in Article 70 of the Revised Penal Code.

With costs against the accused in all instances.

SO ORDERED.

The prosecution made the following narration of facts:

On September 30, 1987 at about 11:00 p.m. in Sitio Yawi-Yawi, Barangay Murtha, San Jose, Occidental Mindoro, seven men, including the accused-appellants and their leader, Roger Cariño, went to the house of complainant Mario Esteves. Five of the men were armed with .22 caliber shotguns (pugakang). They demanded food and took from Mario's father the amount of P500.00 and from Mario his jacket and knife worth P200.00. Mario was ordered to go with the men.

At about 11:30 p.m., the group proceeded to the house of complainant Ferciliza de la Cruz. The appellants went inside the house while the rest remained outside. They shot Ferciliza's dog and placed it in a sack together with several goods from her store. The total cost of the articles, including the dog, was around P290. Ferciliza was warned not to report the incident or they would return and kill her.

The group went next to the house of complainant Arnolfo Francisco's in-laws. At around 12:15 a.m. of October 1, 1987, Arnolfo was awakened by a call from a person who said he wanted to buy something from his store. Through a slight opening of the door, he saw a gun pointed at him and he was ordered to let the intruders in. Five of the armed men went up the house and took candies, cigarettes, soft drinks, bread, and other articles, all valued at P88.00.

The next stop of the group was at the house of complainant Jesus Nazareno, who was still awake and threshing corn. The accused-appellants and two others entered his house and demanded his gun. As he had none, the armed men took from him two pairs of pants and a jacket together worth P800.00 one pack bag worth P75.00, and three roosters worth P1,000.00.

From Nazareno's house the group turned to complainant Conrado Catubig's house where the door was forced open. Sabal and Cariño, with another group member, ordered Conrado to bring out his gun, but as the latter had none to give, they ransacked his house and got his bolo, worth P130.00, a belt worth P120.00, and 3 fighting cocks worth P1,500.00.

Catubig saw them walk toward Oscar Villaplaza's house. After four of the armed men, including Sabal and Resurreccion, entered that house, Mario Esteves heard a commotion inside that enabled him to escape from his captors.

The following morning of October 1, 1987, Anastacio Villaplaza received the news that his son had been killed. Anastacio found Oscar with stab wounds in the chest, back, arms and head, and noticed that the dead man's wristwatch, shoes and airgun, all valued at P4,200.00, were missing.

Municipal Sanitation Inspector Lorenzo B. Lopez of San Jose, Occidental Mindoro, conducted a post mortem examination of the cadaver and certified that the cause of death was internal and external hemorrhage due to the stab wounds.

For the defense, Luzviminda Oronos, a vegetable vendor from Sitio Tanel, Barangay Central, San Jose, Occidental Mindoro, testified that on September 30, 1987, at around 8:30 p.m., Resurreccion Cariño brought vegetables to her house. He helped in tying the beans and left at past 9:00 o'clock in the evening. The following morning, she said, she saw Resurreccion tending his carabao.

Resurreccion Cariño pleaded alibi. He said that on September 30, 1987, he delivered beans to the house of Luzviminda Oronos. He slept at 10:30 p.m. in his own house, also in Sitio Tanel, and woke up at 5:00 o'clock the following morning.

He denied ever having been to Sitio Yawi-Yawi, Barangay Murtha, and claimed that after 5:00 p.m., there was no more public transportation to San Jose that could take him back from the scene of the crime, if he ever went there

that evening. He said he did not know any of the complainants or any of his co-accused.

Manuel Sabal's defense was also alibi. He swore that on September 30, 1987, he was in the house of a Mr. Martinez in Sitio Yawi-Yawi, where he worked as a helper. He denied knowing any of his co-accused. He said that on October 1, 1987, he left the house of Martinez to buy chemicals in San Jose and returned only on October 4, 1987, to Sitio Yawi-Yawi, where he was arrested.

The accused-appellants submit that there being no eyewitness to the killing of Oscar Villaplaza, they had been erroneously convicted on mere circumstantial evidence. The prosecution claimed that the appellants and their companions were armed with guns and yet the injuries sustained by Oscar were stab wounds and not gunshot wounds. And it had also not been established that Oscar was divested of his wristwatch, shoes and air gun.

It should be noted that before the group went to the house of Villaplaza, they passed by the house of Conrado Catubig and took his bolo, along with his belt, and 3 roosters. The bolo must have been the weapon used in the killing of Oscar Villaplaza.

The factual finding that Oscar was divested of his wristwatch, shoes and airgun was supported by the testimony of his father, Anastacio Villaplaza. In fact, this witness testified that 5 pairs of pants, polo, bolo, lighter, flashlight and pack bag were also missing.

Rule 133, Section 5, of the Rules of Court states that there is sufficiency of circumstantial evidence when: (1) there is more than one circumstance; (2) the facts from which the inferences are derived are proven; (3) the confirmation of all the circumstances is such as to produce a conviction beyond reasonable doubt.

Circumstantial evidence is sufficient to convict where the circumstances point to the accused as the culprits. In the case at bar, the following circumstances have successfully overcome the constitutional presumption of innocence and established the guilt of the accused beyond reasonable doubt: From the house of Conrado Catubig the group proceeded to the house of Oscar Villaplaza, where, while near the stairs, the group's hostage, Mario Esteves, heard a commotion inside that frightened him into running away. When Anastacio Villaplaza later went to his son's house, he discovered Oscar's dead body. By the time the group reached Villaplaza's house, the group was already armed with the bolo they had taken from Catubig, in addition to their short and long guns. Their obvious motive was to also rob Oscar who must have been killed when he resisted.

The accused-appellants also claim that the evidence presented was not sufficient to prove their guilt beyond reasonable doubt. They point out that no investigation report and no police officer were presented, and neither was there any corroboration of Mario Esteves' testimony.

It is the prerogative of the prosecution to choose its witness. The determination of the witnesses to be presented is addressed to its sound discretion, subject only to the right against self-incrimination. The testimony of a single witness, if positive and credible, is sufficient to support a conviction even if there is no corroboration.[1] In the case of the other robberies, the guilt of the accused-appellants was sufficiently proven with the testimony of the other victims of the group, namely, Arnolfo Francisco, Ferciliza de la Cruz, Jesus Nazareno and Conrado Catubig.

Regarding the accused-appellants' contention that there was delay in reporting the incident to the police, the explanation is the natural reluctance, usually bred by fear of being involved in a criminal case and its possible repercussions. The failure to reveal at once the identity of the accused does not necessarily impair the credibility of the witness.

We are not persuaded by the Sinumpaang Salaysay[2] signed by Manuel Sabal on December 6, 1991, claiming that this co-appellant Resurreccion Cariño was implicated only because his cousin, Roger Cariño, the leader was

not caught. Resurreccion Cariño and Manuel Sabal were both identified in open court by Mario Esteves, Ferciliza de la Cruz, Jesus Nazareno and Conrado Catubig, as among those who had robbed them.

The defense of alibi cannot stand against the clear and positive identification made by the prosecution witness of the accused-appellants. Alibi is generally a weak defense since it is so easy to fabricate. Courts must view such defense with caution and accept it only when proved by positive, clear and satisfactory evidence.[3]

The trial court was correct in imposing the penalty of reclusion perpetua for the crime of robbery with homicide in Criminal Case No. 2376.

However, the penalty imposed for the five crimes of robbery by a band does not conform to Article 295 of the Revised Penal Code, which provides:

Art. 295. Robbery with physical injuries, committed in an uninhabited place and by a band, or with the use of firearm on a street, road or alley. - If the offenses mentioned in subdivisions three, four, and five of the next preceding article shall have been committed in an uninhabited place or by a band or by attacking a moving train, street car, motor vehicle or airship, or by entering the passengers' compartments in a train or, in any manner, taking the passengers thereof by, surprise in the respective conveyances, or on a street, road, highway, or alley, and the intimidation is made with the use of a firearm the offender shall be punished by the maximum period of the proper penalties. (As amended by Republic Act No. 12, sec. 2, and Republic Act No. 373).

The penalty under Article 294 (5), which is prision correccional maximum to prision mayor medium, or 4 years, 2 months and 1 day to 10 years, should be imposed in the maximum period, which ranges from 8 years and 21 days to 10 years. Applying the Indeterminate Sentence Law, we hereby sentence each of the said accused-appellants to an indeterminate penalty ranging from 4 years of prision correccional as minimum to 8 years and 21 days of prision mayor as maximum for each of the five cases of robbery by a band.

In accordance with the current policy of this Court, the civil indemnity for the death of Oscar Villaplaza is increased from P12,000.00 to P50,000.00.

WHEREFORE, the decision of the court a quo as above modified is **AFFIRMED**, with costs against the accused-appellants. It is so ordered.

Padilla, Griño-Aquino, and Bellosillo, JJ., concur.

[1] People vs. Aldeguer, 184 SCRA 1.

[2] Rollo, p. 142.

[3] People vs. Catubig, 195 SCRA 505.

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