Supreme Court E-Library

SECOND DIVISION

[G.R. No. L-45086. February 19, 1986]

THE PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **BAUTISTA DE LAS PIÑAS, alias "Bautista de la Peña", CRISPULO BERJA,** ***alias*** **"Puloy", and ELISEO MALCONTENTO,** *defendants,* **ELISEO MALCONTENTO,** *defendant-appellant.*

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; ALIBI; CANNOT PREVAIL OVER POSITIVE IDENTIFICATION BY WITNESSES.—** The alibi of the appellant deserves scant consideration. Three witnesses, namely: Renato Santander, Aurelia Salcepuedes and Aida Salcepuedes, who had no evil motive to testify falsely against the appellant, positively identified him as one of the robbers who robbed Aurelia Salcepuedes in the night of March 31, 1972. The house was well lighted and the appellant and his companions stayed for more than an hour ransacking the house of its valuables, so that these witnesses could not have been mistaken in their identification.

2. **ID.; ID.; ID.; REQUISITE FOR THE DEFENSE TO PROSPER.—** Besides, the appellant failed to prove that it was impossible for him to be at the scene of the crime when it was committed. As observed by the trial court, the province of Iloilo has good roads and means of transportation is abundant. It was not impossible for the appellant, therefore, to have been at the scene of the crime at the time of its commission.

3. **ID.; ID.; CREDIBILITY; NOT AFFECTED BY MINOR INCONSISTENCIES.—** Counsel for the appellant points to some contradictions, inconsistencies, and improbabilities in the testimonies of the witnesses for the prosecution which render their testimonies incredible such as: that while Renato Santander declared that Bautista de las Piñas and Morito Lorque went upstairs, Aida Salcepuedes stated that it was Bautista de las Piñas and the appellant Eliseo Malcontento who went upstairs: that Renato Santander testified in court that the appellant Eliseo Malcontento, later on changed to Bautista de las Piñas, removed the sewing machine from its case and got the money from the

Supreme Court E-Library

pillow case where it was hidden, whereas in his sworn statement he said that it was Morito Lorque who removed the sewing machine and took the money from its hiding place; that Renato Santander declared, on direct examination, that Eliseo Malcontento was the first to enter the house of Aurelia Salcepuedes, followed by Bautista de las Piñas, and then, Morito Lorque, whereas, on cross-examination, he stated that Bautista de las Piñas was the last to enter the house; and that while Aurelia Salcepuedes stated in her sworn statement that the appellant Eliseo Malcontento, Morito Lorque and Ricaredo Lorque were the ones who entered her house, she testified in court that it was Bautista de las Piñas, and not Ricaredo Lorque, who entered her house. The inconsistencies and contradictions pointed out, however, refer to minor details which are hard to remember. They do not destroy the credibility of witnesses. On the contrary, such trivial and insignificant discrepancies indicate that the witnesses were not previously rehearsed and asked to tell the same story.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Resurreccion S. Sevilla for defendant-appellant.

D E C I S I O N

CONCEPCION, JR., *J.*:

This is an appeal interposed by the defendant Eliseo Malcontento from the judgment of the then Court of First Instance of Iloilo in Crim. Case No. 2124 finding him and his co-accused, Bautista de las Piñas *alias* "Bautista de la Peña" and Crispulo Berja *alias* "Puloy" guilty of the crime of Robbery with Homicide and sentencing each of them to suffer the penalty of *reclusion perpetua*, with all the accessory penalties of the law; to indemnify Aurelia Salcepuedes and the heirs of the deceased Federico Madero in the amounts of P5,261.00 and P12,000.00, respectively, without subsidiary imprisonment in case of insolvency; and to pay the costs.

The People's version of the facts of the case is as follows:

Supreme Court E-Library

"At about 10:30 in the evening of March 31, 1972 Renato Santander, Archimedes Facto, Angelito Salcepuedes, Wilfredo Cristales and Aniceto Mira were on their way to attend the wake of Federico Madero's father. On the way to the wake, they met some of their townmates who asked them whether they had met six suspicious-looking men. They answered in the negative and then proceeded on their way to Federico Madero's house to attend the wake. However, noting that there were no games or other amusements at the wake, they soon decided to leave.

"On their way home, Santander noticed a lighted cigarette glowing in the dark, in an anthill nearby, midway between Bo. Pandak and Bo. Jibonan, Pavia, Iloilo. Santander commented to his companions that a person was probably defecating near that anthill. Suddenly, six armed men stood up from behind the anthill. They pointed their firearms at Renato Santander and his companions and then began to search them. These six persons were the accused-appellant, Eliseo Malcontento, Bautista de las Piñas alias "Bautista de la Peña," Crispulo Berja *alias* "Puloy", Ricardo Lorque, Gaudencio Balcino *alias* "Gauden" and Morito Lorque (pp. 305, t.s.n., April 12, 1973).

"The six men took Aniceto Mira's fancy ring and leather belt, while Morito Lorque took the key to the corral where Aurelia Salcepuedes' carabao was kept. The six men learned that Renato Santander was the nephew of Aurelia Salcepuedes and they asked him to bring them to her place. Renato Santander went with the three of the armed men (among them was the accused-appellant Eliseo Malcontento). His friends Aniceto Mira, Archimedes Facto and Wilfredo Cristales were ordered to sit and wait on the rice paddies with Crispulo Berja, Ricardo Lorque and Gaudencio Balcino watching over them (pp. 6-15, t.s.n., April 12, 1973).

"Through Renato Santander, the accused Morito Lorque, Bautista de las Piñas and Eliseo Malcontento were able to gain entrance into the house of Aurelia Salcepuedes. Once inside, Eliseo Malcontento ordered Renato Santander to wake up his aunt and to tell her not to shout, otherwise, he will kill her. Renato Santander did as he was told. Santander was also ordered to light a lamp which he did. The armed men then gathered the occupants of the house, namely, Aurelia Salcepuedes, Aida Salcepuedes, Alma Salcepuedes and the housemaid Saling, in the room of Aurelia Salcepuedes. Eliseo Malcontento ordered them to give him their money, threatening to kill them all if they did not comply. Aurelia Salcepuedes answered that they had no money. Morito Lorque, however, repeated their threat and again demanded

Supreme Court E-Library

their money. Eliseo Malcontento pulled out his revolver and threatened Aurelia Salcepuedes. Aurelia asked them to have pity on her daughter as she had recently been discharged from the hospital. She added that she, herself, was sick. Then she told the armed men they could get everything they wanted as long as they would spare their lives. (pp. 15-24, t.s.n., April 12, 1973).

"The armed men ransacked the house while Morito Lorque stood watch over its inmates. Eliseo Malcontento found a roll of money bills which he placed in his pocket. He removed a Singer sewing machine from its case which Bautista de las Piñas brought outside the house. Morito Lorque then ordered Renato Santander to bring the lamp closer to him as he was going to ransack the cabinet. He ordered Santander to look for a sack where he would place all the new bedspreads and other items that he got from the cabinet. The other items which the accused took were a P10.00 bill found inside a shoulder bag in the cabinet, 4 wrist watches, a mahjong set, table alarm clock and several pieces of jewelry. The men also got merchandise from the store of Aurelia Salcepuedes. (pp. 25-30, t.s.n., April 10, 1973).

"Afterwards, Eliseo Malcontento ordered Santander to carry the sack outside the house, as the former followed him from behind, his firearm pointed at Santander. They started to walk away from the house. And some distance away from the house of Aurelia Salcepuedes, Renato Santander saw flashing beams of light about one hundred meters away. Santander was ordered to put the sack down. Then the beam from a flashlight flashed for the second time, and a voice coming from its direction asked, "who goes there". The light focused on Eliseo Malcontento and Santander. The latter, believing that the voice was that of his uncle, started to run towards the direction of the light. The accused Eliseo Malcontento tried to stop him, threatening to shoot him, but, Renato Santander continued to run anyway. (pp. 30-34, t.s.n., April 12, 1973).

"The voice turned out to be that of Patrolman Mamerto Mira, a policeman known to Renato Santander as Nong Mane. Patrolman Mira was accompanied by Federico Madero, a councilman; Pedro Baldevieso: and a certain Jayme. They sought cover behind the rice paddies. (pp. 31-33, t.s.n., October 29, 1973).

"Renato Santander told Patrolman Mira that his aunt Aurelia Salcepuedes had been robbed. Then he told them he would ask for help from Celso Cristales. (pp. 34-37, t.s.n., April 12, 1973).

Supreme Court E-Library

"Patrolman Mira's group crawled towards the back of the house of Aurelia Salcepuedes. They saw a man coming from the house, who fired at them, the shot hitting Federico Madero in the head. Patrolman Mira returned the shot and he saw two or three persons running away. He fired at them, and shouted for help, requesting that Federico Madero be brought to the hospital (pp. 34-35, t.s.n., October 29, 1973).

"One of the robbers was killed as a result of the shooting incident, identified by police and Philippine Constabulary operatives as Morito Lorque. (p. 35, t.s.n., October 29, 1973)."

The defendant-appellant, Eliseo Malcontento, upon the other hand, denied participation in the commission of the offense complained of and interposed the defense of alibi. He claimed that he was at the house of his aunt, Lucia Somiros, at Barrio Jelicuon, Cabatuan, Iloilo from 4:00 o'clock in the afternoon of March 31, 1972 up to 12:00 o'clock, noon, of the following day, when a funeral coach bearing the body of Morito Lorque stopped by the house and they were asked to carry the said body to the house of the deceased.

The appeal lacks merit. The alibi of the appellant deserves scant consideration. Three witnesses, namely: Renato Santander, Aurelia Salcepuedes and Aida Salcepuedes, who had no evil motive to testify falsely against the appellant, positively identified him as one of the robbers who robbed Aurelia Salcepuedes in the night of March 31, 1972. The house was well lighted and the appellant and his companions stayed for more than an hour ransacking the house of its valuables, so that these witnesses could not have been mistaken in their identification.

Besides, the appellant failed to prove that it was impossible for him to be at the scene of the crime when it was committed. As observed by the trial court, the province of Iloilo has good roads and means of transportation is abundant. It was not impossible for the appellant, therefore, to have been at the scene of the crime at the time of its commission.

Counsel for the appellant points to some contradictions, inconsistencies, and improbabilities in the testimonies of the

Supreme Court E-Library

witnesses for the prosecution which render their testimonies incredible such as: that while Renato Santander declared that Bautista de las Piñas and Morito Lorque went upstairs, Aida Salcepuedes stated that it was Bautista de las Piñas and the appellant Eliseo Malcontento who went upstairs: that Renato Santander testified in court that the appellant Eliseo Malcontento, later on changed to Bautista de las Piñas, removed the sewing machine from its case and got the money from the pillow case where it was hidden, whereas in his sworn statement he said that it was Morito Lorque who removed the sewing machine and took the money from its hiding place; that Renato Santander declared, on direct examination, that Eliseo Malcontento was the first to enter the house of Aurelia Salcepuedes, followed by Bautista de las Piñas, and then, Morito Lorque, whereas, on cross-examination, he stated that Bautista de las Piñas was the last to enter the house; and that while Aurelia Salcepuedes stated in her sworn statement that the appellant Eliseo Malcontento, Morito Lorque and Ricaredo Lorque were the ones who entered her house, she testified in court that it was Bautista de las Piñas, and not Ricaredo Lorque, who entered her house. The inconsistencies and contradictions pointed out, however, refer to minor details which are hard to remember. They do not destroy the credibility of witnesses. On the contrary, such trivial and insignificant discrepancies indicate that the witnesses were not previously rehearsed and asked to tell the same story.

WHEREFORE, with the modification that the indemnity to be paid to the heirs of the deceased Federico Madero is increased to P30,000.00, the judgment appealed from should be, as it is hereby, AFFIRMED. With costs against the appellant.

IT IS SO ORDERED.

Abad Santos, Cuevas, Alampay, and *Patajo** *JJ.,* concur.
Escolin, J., took no part.

---

* *Patajo, J.*, a member of the First Division was designated to sit in the Second Division in lieu of Justice Venicio Escolin.