Supreme Court E-Library

EN BANC

[G.R. No. L-31911. July 20, 1979]

THE PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **BENITO DE LA CRUZ and CIPRING DE LA CRUZ,** *defendants-appellants.*

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; CIRCUMSTANTIAL EVIDENCE; WHEN SUFFICIENT FOR CONVICTION.**— Circumstantial evidence is considered sufficient for conviction if the following circumstances are present: a) there is more than one circumstance; b) the facts from which the inferences are derived are proven; and c) the combination of all the circumstances is such as to produce conviction beyond reasonable doubt.

2. **ID.; ID.; CREDIBILITY OF WITNESSES; NOT AFFECTED BY MINOR INCONSISTENCIES IN THEIR TESTIMONIES; ABSENCE OF CIRCUMSTANCES THAT DISCREDIT.**— The inconsistencies in Melchor's testimony, such as the time he was released from the cemetery as compared to the hour the autopsies were conducted, is a minor detail that does not affect his basic credibility, but on the contrary, enhances it for it belies that his version of the incident has been concocted or rehearsed.

3. **ID.; ID.; ALIBI; REQUISITE FOR THE DEFENSE TO PROSPER.**— It is settled jurisprudence that for the defense of alibi to prosper, it is not enough to prove that the accused were somewhere else when the crime was committed but it must likewise be demonstrated that it was physically impossible for them to have been at the situs of the crime at the time.

APPEARANCES OF COUNSEL

Buenaventura A. Reposar for defendants-appellants.

Solicitor General Felix Q. Antonio, Assistant Solicitor General Cirspin V. Bautista and *Solicitor Eulogio Raquel-Santos* for plaintiff-appellee.

Supreme Court E-Library

DECISION

MELENCIO-HERRERA, *J.*:

This is an automatic review of the Decision of the Court of First Instance of Samar, Branch IX, convicting Benito de la Cruz and Cipring de la Cruz of the crime of Robbery in Band with Double Homicide and imposing upon them the capital punishment.

The prosecution narrates the occurrence as follows:

Melchor Bago, 64 years of age, was the light-house keeper at Hinamok Island, Salvacion, Basey, Western Samar. On October 29, 1968, at about 5:00 o'clock in the afternoon, he was proceeding to light the lamp at the said light-house, which is about two-thirds of a kilometer away from his house on the seashore, where he and his wife, Adriana Bago, lived. On the way, he met Elmerio Banasan, a fisherman who had just arrived from fishing, and who informed him that he saw some persons disembark from a motorized *banca* (referred to in the transcript as a "pumpboat"). Looking towards the sea, Melchor saw a "pumpboat" anchored at about "40 *brazas*" from the "beach of the lighthouse." It was painted green and yellow with a roof covering the boat so that when someone enters, he cannot be seen.[1] Noting nothing unusual, he proceeded on his way. Upon reaching the base of the lighthouse, he saw a person crouching behind the cogon grass about four arm's-lengths away. He called out saying "who are you, what are you doing there?" The man stood up, followed by four others. They were all armed, two with revolvers, one with a rifle and still another with a homemade shotgun or "*paltik*." All of them encircled him. One of the men who was carrying a revolver and whom he came to know later as the accused, Benito de la Cruz, ordered the others to hogtie him, warning him not to shout and resist otherwise he would be killed; while another, whose name he knew later as Cipring de la Cruz, took his bolo away. Then Benito de la

---

[1] T.s.n., April 7, 1969, p. 25.

Supreme Court E-Library

Cruz inquired where he kept the .38 cal. rifle and .45 cal. pistol issued by the Government to him. Melchor denied having those firearms. He was then taken by Benito, Cipring and another companion to a nearby cemetery. After being made to sit, his upper arms were tied to the post of a tomb with his feet likewise tied to the fence. Cipring tied Melchor's arms loosely but Benito told him to tighten it in order to prevent escape. Then Benito de la Cruz asked Melchor which part of his house was open and Melchor replied that it was the door and window facing the sea. The group then stuffed Melchor's mouth with a piece of cloth and a handkerchief, and before leaving, Benito told him that they would kill his wife and would return to kill him too.

At about 9:00 o'clock in the evening of that same day, Camilo Saborrido, a fisherman, whose house is near that of Melchor, was unloading coconut shells from his *banca* and carrying them to his house. While doing so, he noticed a motorized *banca*, which had come from the direction of the lighthouse, drop anchor in front of Melchor's house. That *banca* was about fifty meters away from where he was. Then he saw seven men disembark and proceed uphill towards the direction of Melchor's house. He did not bother to see what those persons were up to as he was far from them. It was only the next day that he saw the dead body of one Edilberto Estriber on the beach about 30 meters away from where he was unloading coconut shells the night before. He also saw the dead body of Melchor's wife, with hands and legs tied to a piece of wood, lying face up, with a strip of rattan tied tightly around her neck.

Melchor remained tied at the cemetery until 10:00 o'clock the next morning when the *barrio* teenagers found and untied him and informed him that his wife and Edilberto Estriber had been killed. Reaching home, he saw the dead body of his wife about three arm's lengths from their abode. Inside his house, things were in disarray, and the following were missing: radio, cash, flashlight, one can of rice, canned goods, three pairs of earrings, two gold necklaces, three suitcases and a trunk of clothes, all valued at ₱1,313.00.

Supreme Court E-Library

The dead body of Edilberto Estriber was found on the beach in front of Melchor's house, with wounds on the left and right breast. Dr. Harry S. Marabut, Municipal Health Officer of Basey, Samar, performed the autopsy on the cadavers of Adriana Bago and Edilberto Estriber on October 30, 1968. His findings were reflected in the postmortem reports he issued, to wit:

"Adriana Bago

x x x x x x x x x

"III External and Internal Findings:

A. Head and Neck — Presence of multiple abrasions at the muchal area (semi circular) with the fracture of the hyoid bone, blocking the air passage producing asphyxia.

B. Thorax - Hypersthenic Type — Opening of thoracic cavity — lungs expanded.

C. Upper Extremities — presence of abrasions at both wrist joints.

D. Lower Extremities — presence of abrasions at both ankle joints.

"IV Cause of Death: Asphyxia due to Strangulation (fracture of hyoid bone).[2]

x x x x x x x x x

"Edilberto Estriber:

x x x x x x x x x

"III External and Internal Findings:

A. Head and Neck — Presence of multiple abrasions at the frontal and maxillary areas with compacted sand particles.

B. Thorax

1) Presence of thru-thru wound at Right supra-mamary area traversing the right lung making an exit at right scapular angle (1" x 1/3" x 9").

[2] Exhibit "C", p. 70, Original Record.

Supreme Court E-Library

2) Presence of thru-thru wound at Right Infra-Mamary area hitting the right lung making an exit at Right Infra-capular area (1" x 1/3" x 9").

3) Presence of three (3) penetrating wounds (1" x 1/3" x 6") at Right Mamary area hitting the Right Lung.

4) Four (4) Penetrating wounds (1" x 1/3" x 5") at left mamary area hitting the heart and left lung.

5) Presence of Penetrating wound at left Infra-mamary area (1" x 1/3" x 4") hitting the lower lobe of left lung.

6) Presence of Penetrating wound (1" x 1/3" x ½") left supra scapular area hitting the left lung.

7) Penetrating wound (1" x 1/3" x 6") at left Infrascapular area hitting the left lung.

8) Penetrating wound #4 — (1" x 1/3" x 4") at right scapular area and right para vertibral areas.

= opening of the thorax-presence of blood approximately one and a half (1-½) liters.

NOTE — All injuries are fatal.

"IV Cause of Death: Shock due to injury of the heart and Right and Left Lungs.[3]

Melchor Bago was also examined by Dr. Marabut and according to the medical certificate issued to him, dated December 12, 1968, he sustained the following injuries, which would heal from ten (10) to eleven (11) days barring complications, namely:

"1) Abrasions (5 cm. diameter) superficial right and left lower jaw.

2) Multiple abrasions, around right and left wrist joints.

3) Multiple abrasions, superficial, left and right arms.

4) Multiple abrasions, around right and left ankle joints." (Exh. F)

---

[3] Exhibit "B", p. 68, *Ibid.*

Supreme Court E-Library

Investigation by the authorities ensued. A few days before December 12, 1968, the Chief of Police of Basey, Western Samar, sent Melchor with some policeman and a PC constable to try and trace the motorboat used in the commission of the offense by walking along the shore starting from San Jose, Tacloban City. Note may be taken of the fact that only a relatively narrow strip of water separates the southwestern part of Samar from the northeastern coast of Leyte.

Upon arriving at the beach at San Roque, Tanauan, Leyte, on December 11, 1968, Melchor Bago identified a boat thereat as the very same boat he saw at Hinamok Island on October 29, 1968, except that it was painted differently in blue. A police sergeant of Tanauan, Leyte, who was with them, called the owners of said boat, and when the two appellants appeared, one after the other, and came face to face with Melchor, the latter "had a certain unusual feeling and his hair stood on its ends"[4] as he recognized them to be those who had tied him that fateful evening. Parenthetically, at that point of his testimony, the Fiscal placed on record "the reaction of this witness when answering the question of the Court with respect to the spontaneous identity of the accused, because the witness jerked and demonstrating spontaneity as if he saw a long lost friend." Melchor, at the time, was wearing sunglasses so he himself would not be recognized. Melchor then informed the police "secretly" of the identity of his assailants but since the police were not armed with warrants of arrest, they all returned home to Basey, Western Samar.

The appellants were arrested on December 12, 1968 and were brought to Basey, Samar, where they were investigated by the Chief of Police. The latter likewise filed the corresponding Complaint for Robbery in Band with Double Homicide before the Municipal Court of Basey on the same day. During the investigation, both appellants denied participation in the commission of the robbery-homicide on October 29, 1968. However, on December 14, 1968, a Saturday, the Chief of Police was informed

---

[4] T.s.n., April 7, 1969, p. 27.

Supreme Court E-Library

by one of the jailers that Cipring de la Cruz wanted to confide something to him about the incident. He was thereupon investigated anew by the Chief of Police. The investigation, which was reduced to writing, was finished at past 12:00 o'clock noon but Cipring de la Cruz was unable to sign the same because the Municipal Judge before whom the Chief of Police believed it should be signed had already gone home. The following Monday, December 16, 1968, Cipring de la Cruz, accompanied by his counsel was taken to the Municipal Judge but at that time he refused to sign and confirm the statement he had given.

On February 26, 1969, the corresponding Information charging appellants and three Does with the crime of Robbery in Band with Double Homicide was filed before the Court of First Instance of Western Samar, Branch IV, reading as follows:

That on or about the 29th day of October, 1968, in the Municipality of Basey, Western Samar, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused conspiring and confederating together and mutually helping one another with John Doe, Peter Doe, and Paul Doe who are all still at large and while armed with firearms and deadly weapons with intent of gain, with violence against and intimidation of persons did then and there wilfully, unlawfully, and feloniously hogtie one Melchor Bago with a piece of rope after which they forcibly entered the dwelling of said Melchor Bago and once inside take, steal, rob, and carry away the following personal properties, to wit:

ARTICLES	*WORTH OF VALUE*
Radio Transistor (Maharlika)	₱ 170.00
Cash	8.50
Flashlight	4.50
Rice, one tin can full	15.00
Canned Goods	15.00
Revolver, Cal. 38, Colt	300.00
Three pairs of gold earrings	150.00
Two gold necklaces	50.00
Three suitcases	50.00
One Chest box or trunk with clothes	550.00
Total amount	₱ 1,313.00

Supreme Court E-Library

without and against the consent of the said Melchor Bago valued in the totality of ₱1,313.00 to the damage and prejudice of said owner in the aforementioned amount and in pursuance of their criminal conspiracy and during or on the occasion of the robbery with deliberate intent to kill Edilberto Estriber and Adriana Bago with treachery, evident premeditation, and with abuse of superior strength did then and there wilfully, unlawfully, and feloniously hog-tie and strangle Adriana Bago, assault, attack, stab, and hack Edilberto Estriber with the weapon which they provided themselves for the purpose which strangling resulted in the death of Adriana Bago and inflicting multiple wounds on the different parts of the body of Edilberto Estriber which injuries directly caused their death.

"That in the commission of the crime, the following aggravating circumstances were present:

"1. Nocturnity;
"2. Use of Motor Boat;
"3. That the crime was committed in the dwelling of the complaining witness Melchor Bago;
"4. That in the commission of the crime, unlicensed firearms were used in band.

"CONTRARY TO LAW."

Appellants denied participation in the commission of the offense charged. They maintained that at about 4:00 o'clock in the afternoon of October 29, 1968, both of them, with other persons, beached their own fishing boat and that of Victoriano Mansalay as it was the end of the fishing season. Thereafter, they were in the house of Victoriano Mansalay at San Roque, Tanauan, Leyte, from 5:00 o'clock in the afternoon until 12:00 o'clock midnight because they helped in the preparation of the food for the merrymaking held in the house of Victoriano on which occasion profits at the end of the fishing season were to be distributed. Later, they also helped in serving food to the guests. They argue then that as they did not leave that place at all, they could not have been at the scene of the crime on the date in question. Their testimonies were corroborated by Julian Sanches, Victoriano Mansalay, Benedicto Campos and Francisco Mendiola.

Supreme Court E-Library

Unconvinced, the trial Court, after hearing, convicted the appellants as follows:

"WHEREFORE, premises above considered, the Court finds the two accused herein Benito de la Cruz and Cipring de la Cruz guilty beyond reasonable doubt as principals of the consummated crime of robbery with double homicide defined and penalized under Article 294, paragraph 1 of the Revised Penal Code, and considering the two aggravating circumstances aforementioned (in band, and use of a motor vehicle) and without any mitigating circumstance to offset the same, hereby sentences each of the herein accused to DEATH, to pay the costs of this case and jointly and severally to indemnify each of the heirs of Adriana Bago and Edilberto Estriber in the amount of ₱12,000.00 for each death.

xxx xxx xxx

In this appeal, appellants attribute the following errors to the trial Court:

1. The lower Court erred in giving credence and weight to the testimony of Melchor Bago as a whole especially on the point that he recognized and identified both accused in Bo. San Roque, Tanauan, Leyte on December 11, 1968, a period of 43 days after the alleged incident on October 29, 1968.

2. The lower Court erred in giving much credence and weight to the testimony of the Chief of Police of Basey, Samar, Antonio Tabuac to the effect that he investigated Cipring de la Cruz and that he reduced the same to writing and which later Cipring de la Cruz refused to sign.

3. The lower Court erred in giving much weight to the unsigned alleged statement of Cipring de la Cruz against said Cipring de la Cruz and against his co-accused, Benito de la Cruz.

4. The lower Court erred in finding both accused responsible for the death of Edilberto Estriber.

5. The lower Court erred in disregarding the defense of both accused and instead of acquitting them, the Court convicted them and imposed the penalty of death.

6. The lower Court erred in not acquitting both accused on reasonable doubt.

Supreme Court E-Library

Fundamentally, appellants assail the judgment of conviction of the lower Court on the ground that it was based on circumstantial evidence.

Circumstantial evidence is considered sufficient for conviction if the following circumstances are present: a) there is more than one circumstance; b) the facts from which the inferences are derived are proven; and c) the combination of all the circumstances is such as to produce conviction beyond reasonable doubt.[5]

There is, indeed, no direct evidence that both deceased were killed by appellants and their companions. We find, however, that the combination of all circumstances in this case is sufficient to warrant conviction with moral certainty.

Melchor Bago testified that after being encircled by the group of five armed men, appellant Benito de la Cruz inquired from him regarding the firearms issued to him by the Government. Thereafter, while he was being tied in the cemetery, Benito also asked "what portion of your house is open?" And he answered "the door facing the sea is now open."[6] Subsequently, Benito de la Cruz told him before they left him tied to a post in the cemetery that they would kill his wife.[7]

At around 9:00 o'clock in the evening, Camilo Saborrido, a fisherman, whose house was near that of Melchor Bago, testified that he saw a "pumpboat" anchor in front of the latter's house. And more significantly, that it had come from the direction of the lighthouse. He declared that he could see it clearly because it was a moonlight night. Then he saw seven men disembark from the boat and proceed uphill towards the house of Melchor. The next day, he found the dead bodies of Adriana Bago and Edilberto Estriber.[8]

---

[5] Sec. 5, Rule 133, Rules of Court.

[6] T.s.n., April 7, 1969, p. 12.

[7] T.s.n., *Ibid*, p. 13.

[8] T.s.n., May 5, 1969, pp. 35-40.

Supreme Court E-Library

The foregoing chain of circumstances, pieced together, in point of time and by sequence of events, point to one conclusion — that appellants and their companions were the ones who tied up Melchor in the cemetery; thence, they proceeded to Melchor's house, as they themselves had categorically told Melchor. In the latter place, they must still have looked for the firearms issued to Melchor, as shown by the fact that Melchor found things in the house in disarray. Thereafter, they robbed the house and on that occasion killed Adriana Bago and Edilberto Estriber. That Adriana was bound hand and foot is characteristic of the same maltreatment that Melchor received in the cemetery when his arms, his hands and his feet were also bound and tied by appellants and their companions.

Additionally, after a search along the northeastern coast of Leyte, Melchor accompanied by the police, chanced upon a motorized *banca* which Melchor readily identified as that which was anchored fifty yards away from the lighthouse in the afternoon of October 29, 1968. And when he saw the owners thereof upon being summoned by the police, he readily recognized them to be the culprits. If they did not recognize him nor suspected that the police were tracking them, it was because the police disguised their mission by inviting people to drink in a store by the seashore.[9]

Appellants, however, assail Melchor's testimony in that being an old man, 64 years of age, he already had a faulty memory as shown by the fact that he could not even remember the names of the policemen who accompanied him during the search.[10] While this may be so, it does not necessarily follow that he would have the same difficulty recognizing the faces of persons who had maltreated him and who had killed his wife. The passage of forty-three days from the commission of the robbery and homicide up to the date the appellants were identified and arrested would neither dim his memory after having undergone such a harrowing and traumatic experience.

---

[9] T.s.n., Nov. 15, 1969, p. 176.

[10] T.s.n., April 7, 1969, p. 26.

Supreme Court E-Library

Appellants further contend that during the months of October, November and December, it is of common knowledge that the days are shorter and the nights longer so that at 5:25 P.M., Melchor Bago could no longer have seen clearly the faces of appellants. Note can be taken of the fact, however, that at that hour in October, objects and people are still readily discernible especially at short distances. It must be recalled that appellants not only came very near to Melchor, but they even tied him and talked to him. They came close enough and stayed long enough with him to enable him to see and remember their faces.

The inconsistencies in Melchor's testimony, such as the time he was released from the cemetery as compared to the hour the autopsies were conducted, is a minor detail that does not affect his basic credibility, but on the contrary, enhances it for it belies that his version of the incident has been concocted or rehearsed.

The trial Court neither erred in giving credence and weight to the testimony of the Chief of Police of Basey, Samar, to the effect that he had investigated appellant Cipring de la Cruz and had reduced it to writing, but that the latter changed his mind and refused to sign it two days later. The defense has not presented any convincing reason that would impel us to disregard his testimony. As Chief of Police, he acted in the performance of his official duty, and the legal presumption remains that official duty has been regularly performed.[11] In regards the unsigned statement of Cipring de la Cruz, taken on December 14, 1968, we find no error on the part of the trial Court in admitting it as part of the Chief of Police's testimony. In that affidavit, Cipring admitted having been with a group at the lighthouse at Hinamok Island, having tied an old man, having gone to the latter's house, and having left that place with loot, except that he claimed that he and his brother had been merely forced to go with them under duress and at the point of a gun. Considering, therefore, that the general tenor of the affidavit was exculpatory, the defense cannot successfully allege that it was a mere

[11] Section 5(m), Rule 131, Rules of Court.

Supreme Court E-Library

fabrication of the Chief of Police, besides the fact that it listed names of people from Tanauan, Leyte, unknown to the Chief of Police. And more importantly, that affidavit was not the sole basis of conviction. It was the combination of circumstances surrounding the occurrence which convinced the trial Court to adjudge the appellants guilty: thus,

"It is true that there is no direct evidence as to who robbed the house of Melchor Bago and who killed his wife Adriana and one Edilberto Estriber, but the Court is fully convinced by the circumstantial evidence on record that the two accused herein and their three unindentified companions were the ones who robbed and killed Adriana Bago and Edilberto Estriber. It has been proved that the persons who disembarked from an anchored motorboat near the lighthouse and who later tied Melchor Bago inside the cemetery were the very persons who later in that evening disembarked from the same motorboat near the house of Melchor Bago. Likewise, it was proved that Benito de la Cruz, accused herein, revealed their intention to rob and kill Adriana when he asked Melchor in the cemetery which part of his house was opened, and then when they demanded from him where his two pistols were being kept. And before they left Melchor in the cemetery, they informed him that they are going to kill his wife. The Court entertains no doubt that these two accused herein and their three companions conspired and confederated and were the ones who robbed the house of Melchor Bago and killed Adriana and one Edilberto Estriber."[12]

The defense of alibi is bereft of merit. It has been completely overthrown by the testimony of Melchor Bago and by the chain of circumstantial evidence herein. Moreover, it takes only about two hours to negotiate the distance between the house of Victoriano Mansalay at Barrio San Roque, Tanauan, Leyte, where the appellants allegedly were, to Hinamok Island where the crime was committed.[13] It is settled jurisprudence that for the defense of alibi to prosper, it is not enough to prove that the accused were somewhere else when the crime was committed but it must likewise be demonstrated that it was

---

[12] pp. 30-31. *Rollo*.

[13] T.s.n., Aug. 8. 1969. p. 124.

Supreme Court E-Library

physically impossible for them to have been at the situs of the crime at the time.[14]

Upon the foregoing premises, conviction for the crime of Robbery with Double Homicide is warranted, with the aggravating circumstances of nighttime, and of having been committed by a band being present, and with no mitigating circumstance to offset them.

The crime of Robbery with Homicide is punishable by *reclusion perpetua* to death. In consonance with Article 63(1) of the same Code, appellants should be sentenced to the capital punishment. However, for lack of the required number of votes, the penalty to be imposed is the next lower in degree or *reclusion perpetua*.

WHEREFORE, as thus modified, the judgment appealed from is hereby affirmed, with the additional modification that the accused, jointly and severally, shall indemnify Melchor Bago in the amount of ₱1,313.00, the value of the articles stolen.

Costs against accused-appellants.

SO ORDERED.

Fernando, C.J., Teehankee, Makasiar, Antonio, Concepcion Jr., Fernandez, Guerrero, Abad Santos, and *De Castro, JJ.*, concur.

Barredo, J., considering the findings of fact in the main opinion which are sustained by the evidence on record, I vote for affirmance.

Aquino, J., took no part.

Santos, J., is on leave.

---

[14] *People vs. Hamtig*, 29 SCRA 14 (1969), and others.