Supreme Court E-Library

EN BANC

[G.R. No. L-32625. August 31, 1979]

THE PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **OSMUNDO CASTAÑEDA** *y* **ENCONTERO, BENEDICTO DE AUSEN @ DICK @ BENNY, and JUANITO RAGURO,** *defendants,* **OSMUNDO CASTAÑEDA** *y* **ENCONTERO and JUANITO RAGURO,** *defendants-appellants.*

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; CONFESSIONS; EXTRAJUDICIAL CONFESSION; UNIVERSALLY RECOGNIZED AS ADMISSIBLE EVIDENCE AGAINST THE ACCUSED.**— Extrajudicial confessions of the accused in a criminal case are universally recognized as admissible evidence against him, and this rule is based on the presumption that no one would declare anything against himself unless such declarations were true. Accordingly, it has been held that a confession constitutes an evidence of a high order since it is supported by the strong presumption that no person of normal mind would deliberately and knowingly confess to a crime unless prompted by truth and his conscience. Hence, the presumption of the law is in favor of the spontaneity and voluntariness of the statement given by an accused, and it is incumbent upon him to destroy that presumption.

2. **ID.; ID.; CREDIBILITY OF WITNESSES; TRIAL COURT IS NOT BOUND TO BELIEVE ALL THAT THE WITNESSES SAID.**— The trial court is not bound to believe all that the said witness has said, but it may give weight and credence to such portions of her testimony as it may deem worthy of belief and disbelieve the other portions of her testimony. Assuming for the sake of argument, that some portions of the testimony of Teresita Nobello are incredible and improbable, nevertheless, the same are insufficient to discredit the whole of her testimony. The trial court is not bound to believe all that the said witness has said, but it may give weight and credence to such portions of her testimony as it may deem worthy of belief and disbelieve the other portions of her testimony. Thus, as one authority puts

Supreme Court E-Library

it: "Triers of facts are not bound to believe all that a witness has said; they may accept some portions of his testimony and reject other portions, according to what seems to them, upon other facts and circumstances, to be the truth. x x x Even when witnesses are found to have deliberately falsified in some particulars, the jury are not required to reject the whole of their uncorroborated testimony, but may credit such portions as they may deem worthy of belief."

3. **ID.; ID.; ID.; NOT AFFECTED BY MINOR INCONSISTENCIES.**— As to the alleged inconsistencies in the testimony of the said witness and her sworn statement, it suffices to state that the same refer to minor and collateral matters which do not affect her credibility. On the contrary, it heightens her credibility as it shows that her testimony was neither coached nor rehearsed. Far from being evidence of falsehood it could justifiably be regarded as a demonstration of her good faith.

4. **ID.; ID.; ID.; THE ABSENCE OF ANY IMPROPER MOTIVE ON HER PART TO MAKE A FALSE IMPUTATION AGAINST THE HEREIN APPELLANTS FURTHER STRENGTHENS HER CREDIBILITY.**— Besides, it may also be pointed out that Teresita Nobello did not know personally any of the accused before the crime was committed. Neither did she know the victim. She had no motive to fabricate evidence against the appellants implicating them in so grave a crime as robbery with homicide. The absence of any improper motive on her part to make a false imputation against the herein appellants further strengthens her credibility.

5. **ID.; ID.; ID.; COMPETENCY; DEAF-MUTE.**— The mere fact that she is a deaf-mute is insufficient to justify a finding that she is an incompetent witness, so long as she can perceive, and perceiving she can make known her perception to others.

6. **ID.; ID.; CONFESSION; EFFECT WHEN CORROBORATED BY *CORPUS DELICTI*.**— At any rate, even if the testimony of the said witness is left wholly out of consideration, still there is sufficient basis for conviction, for a confession corroborated by evidence of *corpus delicti* will suffice. It is not indispensable that an eye-witness should have seen the commission of the crime before an accused may be held liable under his own confession. Otherwise, the usefulness of the confession as a species of proof would vanish if it were necessary, in addition

Supreme Court E-Library

to the confession to adduce evidence sufficient to justify conviction independently of such confession.

7. ID.; ID.; ALIBI; DEFENSE THEREOF MUST BE RECEIVED WITH UTMOST CAUTION.— The rule is well-settled, to the point of being trite, that the defense of alibi, which is easy to concoct, must be received with utmost caution, for it is one of the weakest defenses that can be resorted to by an accused, hence, *to be successful, it must be proven by positive, clear and* satisfying evidence, reasonably satisfying to the mind of the court of the truth of such defense. Where nothing supports it except the testimony of relatives and friends — as in the present case — the said defense weighs and is worth nothing. Besides, the rule is to the effect that for alibi to prosper, it is not enough to prove that he was somewhere else when the crime was committed but the defendant must likewise demonstrate that it was physically impossible for him to have been at the scene of the crime at such time.

8. CRIMINAL LAW; ROBBER WITH HOMICIDE; LIABILITY OF PARTICIPANTS.— Rule is settled that when homicide takes place as a consequence or on the occasion of the robbery, all those who took part in the robbery shall be guilty as principals of the complex crime of robbery with homicide whether or not they actually participated in the killing, unless there is proof that they had endeavored to prevent the killing.

9. ID.; MITIGATING CIRCUMSTANCES; VOLUNTARY SURRENDER; WHEN APPRECIATED.— The fact that they did not resist the authorities when they were arrested does not amount to voluntary surrender. A surrender to be voluntary must be spontaneous, showing the intent of the accused to submit himself unconditionally to the authorities.

10. ID.; AGGRAVATING CIRCUMSTANCES; TREACHERY; WHEN *PRESENT.*— Treachery attended the killing. The attack against the deceased who was unarmed, was sudden and unexpected, without any warning and without giving him an opportunity to defend himself.

11. ID.; ID.; ABUSE OF SUPERIOR STRENGTH; ABSORBED IN TREACHERY.— The aggravating circumstance of abuse of superior strength is likewise present, however, the same is

Supreme Court E-Library

absorbed in treachery. It cannot be estimated as an independent aggravating circumstance when treachery is present.

12. ID.; PENALTIES; DEATH; WHEN IMPOSED IN ROBBERY WITH HOMICIDE.— Robbery with homicide is punished by *reclusion perpetua* to death. There being one aggravating circumstance and no mitigating circumstance, the trial court correctly imposed the death penalty.

APPEARANCES OF COUNSEL

Solicitor General Estelito P. Mendoza, Assistant Solicitor General Rosalio de Leon and *Solicitor Jesus O. Ibay* for plaintiff-appellee.

Wenceslao B. Trinidad & Associates for defendant-appellants.

D E C I S I O N

PER CURIAM:

About 3:00 o'clock in the morning of March 1, 1970, a man by the name of Edmundo Enriquez became the victim of a robbery-killing at Pilapil St., Pasay City. He was beaten and stabbed on the different parts of his body which caused his subsequent death.[1] His wallet containing ₱60.00, his wrist watch, ring, shirt, and shoes, were all taken from him.[2]

A certain Teresita Nobello, a deaf-mute, who at the time was walking along Taft Avenue and E. de los Santos Avenue, Pasay City, allegedly saw the incident.[3] And around 8:00 o'clock in the morning of the same day, reported the matter to the police authorities of Pasay City, who thereafter, investigated and took down her statement in writing.[4] Nobody, however, was arrested for the offense.

---

[1] Exhibit "A", p. 35, Record.

[2] Exhibit "G", p. 48, Record.

[3] Exhibit "D", p. 45, Record.

[4] pp. 13-14, t.s.n., June 19, 1970.

Supreme Court E-Library

Sometime, on June 2, 1970, one Osmundo Castañeda was arrested by NBI agents at the ice factory where he was working, located at the boundary of Pasay City and Baclaran.[5] After the investigation, he signed a sworn statement,[6] in the form of question and answer, admitting his participation in the commission of the crime, and pointed to Juanito Raguro and Benedicto de Ausen as his companions.

In the said sworn statement, Osmundo Castañeda, declared in substance as follows:

About 10:00 o'clock in the evening of March 1, 1970, he went to a prostitution house at Pilapil St., Pasay City. Arriving thereat, he saw Benny, whose real name is Benedicto de Ausen, and one Juanito conversing or "*nagkukwentuhan*." Thereafter, the two called for him. Benny asked him if he had money and when he answered that he had, the former invited him and Juanito to drink. So, they proceeded to the store of "*DULING*" (Josephine's Store) on Taft Avenue, Pasay City.

While drinking beer at the said store, they noticed the deceased Edmundo Enriquez, who was also drinking beer at a nearby table. Juanito approached the deceased and engaged the latter in a conversation. After a while, Juanito returned to their table and informed them that the deceased had plenty of money because the latter often dropped coins in the jukebox, and that he (the deceased) could be of help in their need for money.

Upon being so informed, Benny instructed Juanito to go back to the table of the deceased and to ask the latter if he would like to have a girl. Accordingly, Juanito approached and asked the deceased if he would like to have a girl, to which proposal the deceased consented. The three of them accompanied the deceased to the prostitution house at Pilapil St., Pasay City.

After they left the prostitution house, and while walking along Taft Avenue, Pasay City, Benny demanded money from the

---

[5] pp. 8, 17, t.s.n., June 18, 1970; p. 3, t.s.n., September 18, 1970.

[6] Exhibit "C", p. 41, Record.

Supreme Court E-Library

deceased. The latter, however, told Benny that he had no more money and instead offered his cigarettes to him, which Benny refused and insisted that the deceased should give him money. As they passed along a dark alley, Benny told him, "*Mando, Itulak mo.*" Accordingly, he pushed the deceased into the dark alley, and immediately thereafter, Juanito hit the deceased on the head and different parts of his body with a lead pipe, while Benny whipped out a "*balisong*" and repeatedly stabbed the deceased on the hand, nape, and slashed his throat and neck.

After the deceased staggered to the ground, Benny took the wallet of the deceased containing ₱60.00 and divided it among themselves. Benny also took the wrist watch, ring, and shirt of the deceased. Thereafter, they fled from the scene of the crime.

Osmundo Castañeda also re-enacted and demonstrated to the NBI agents his participation in the commission of the crime.[7]

On the strength of the said sworn statement, and other evidence, Osmundo Castañeda, Juanito Raguro, and Benedicto de Ausen were prosecuted for the robbery and homicide committed against the deceased Edmundo Enriquez in the Circuit Criminal Court of Pasig, Rizal, docketed therein as Criminal Case No. CCC-VII-407-P.C. under an information[8] reading as follows:

"The undersigned Assistant City Fiscal accuses OSMUNDO CASTAÑEDA *y* ENCONTERO, BENEDICTO DE AUSEN @ DICK @ BENNY and JUANITO RAGURO, the true names and real identities and present whereabouts of the last two accused, are still unknown and uncertain of the crime of ROBBERY WITH HOMICIDE, committed as follows:

"That on or about the 1st day of March, 1970, in Pasay City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, Osmundo Castañeda *y* Encontero, Benedicto de Ausen @ Dick @ Benny and Juanito Raguro, conspiring and confederating together and mutually helping one another, with intent

---

[7] p. 13, t.s.n., June 18, 1970; Exhibits "F" to "F-14," pp. 12-137, Record.

[8] p. 1, Record.

Supreme Court E-Library

to gain and against the will and consent of Edmundo Enriquez and with the use of superior strength, did then and there wilfully, unlawfully and feloniously take, steal and rob from said Edmundo Enriquez the cash amount of ₱60.00, his wrist watch, ring, shirt and shoes valued at ₱300.00, to the damage and prejudice of said Edmundo Enriquez in the aforesaid total amount of ₱300.00; the said accused, in accordance with and pursuant to their conspiracy and in order to carry out their avowed purpose, with treachery and with intent to kill, did then and there willfully, unlawfully and feloniously attack, assault, hit with a lead pipe on the head and stab with a *balisong* on the neck said Edmundo Enriquez causing his instantaneous death.

"Contrary to law."

Meanwhile, on July 3, 1970, the accused Juanito Raguro was arrested by NBI agents in Bo. Lantag, Sta. Cruz, Ilocos Sur.[9] After the investigation, he also signed a sworn statement,[10] in the form of question and answer, admitting his participation in the commission of the crime, and likewise named his co-accused Osmundo Castañeda and Benedicto de Ausen as his companions. His declaration in the said sworn statement corroborates in material points the declarations of Osmundo Castañeda in his sworn statement.

As the accused Benedicto de Ausen is still at large, trial proceeded as against the accused Osmundo Castañeda and Juanito Raguro only, who upon arraignment pleaded not guilty to the charge.[11]

At the trial, the prosecution presented in evidence, among others, the extrajudicial confession of the two accused as well as its only eyewitness to the crime, Teresita Nobello, who testified thru qualified interpreters. She declared that while she was passing along Taft Avenue and E. de los Santos Street at around 3:00 in the morning of March 1, 1970, she saw the accused Osmundo Castañeda in front of a nearby alley, standing and

[9] p. 63, Record.

[10] Exhibit "I", p. 105, Record.

[11] pp. 7, 87, Record.

Supreme Court E-Library

smoking. When she noticed that the said accused was looking around as if guarding something, she hid herself. Thereupon, she heard a shout or scream. When she looked at the direction where the shout came from, she saw three men ganging up on the deceased. One of them (Benedicto de Ausen) stabbed and slashed the neck of the deceased, while the other man (Juanito Raguro) hit the victim on the head and different parts of the body with a lead pipe. The third man (Osmundo Castañeda) acted as a lookout.[12] Thereafter, she saw the accused Osmundo Castañeda take the wallet and the wrist watch of the deceased. She saw also the man with sideburns (Benedicto de Ausen) remove the T-shirt of the deceased while the short and stout man (Juanito Raguro) removed the shoes of the victim.[13] After the three men had left, she wanted to help the victim, but when she saw that the man was dying, she ran away.[14]

The two accused denied any participation in the commission of the crime, and repudiated their respective confessions, claiming that the same were procured through threat and maltreatment.[15] In addition, they interposed an alibi. Thus, the accused Osmundo Castañeda claims that about 1:00 o'clock in the morning of March 1, 1970, he was at his place of work — at the *bodega* of an ice factory located at the boundary of Pasay City and Baclaran — waiting for orders for delivery of ice. Around 2:00 a.m., a certain Eddie ordered some ice to be delivered at the market place of Baclaran. After delivering the ice, he returned to his place of work, arriving thereat at 2:30 a.m. and rested there until he was relieved at 5:00 a.m. by the next shift. Thereafter, he went to the house of the manager, one Mr. Marcelino Gardula, at P. Burgos, Pasay City, and stayed there until 7:00 a.m. of that day.[16] On the other hand, the accused

---

[12] pp. 8-11, t.s.n., June 18, 1970.

[13] pp. 13, 16, t.s.n., June 18, 1970.

[14] p. 17, t.s.n., June 18, 1970.

[15] pp. 52-53, t.s.n., Sept. 8, 1979; pp. 43-46, t.s.n., Sept. 9, 1970.

[16] pp. 2-3, 6-8, 10, 11, 12, 13, 14, t.s.n., Sept. 8, 1970.

Supreme Court E-Library

Juanito Raguro declared that on March 1, 1970, he was at Bo. Lantag, Sta. Cruz, Ilocos Sur, helping the barrio captain, Alejandro Rabong, in curing tobacco, and that he had been residing at the said place since February 12, 1970 up to July 3, 1970.[17]

After the trial, on September 18, 1970, the trial court rendered its decision convicting the two accused of the crime of robbery with homicide, the dispositive portion of which reads as follows:

"WHEREFORE, finding the accused Osmundo Castañeda and Juanito Raguro, GUILTY beyond reasonable doubt of the crime of Robbery with Homicide, under Article 293 of the Revised Penal Code in relation to Section 1 of Article 294 thereto, as charged in the information, the Court hereby sentences each of them to suffer the penalty of DEATH; to indemnify the heirs of the deceased, Edmundo Enriquez, the amount of Twelve Thousand Three Hundred Sixty Pesos (₱12,360.00); to pay the heirs of the deceased the amount of Five Thousand Pesos (₱5,000.00) as moral damages, and another Five Thousand Pesos (₱5,000.00) as exemplary damages and to pay their proportionate share of the costs."[18]

The case is now before Us for mandatory review.

The appellants now maintain that the trial court erred in holding that their extra-judicial confessions were given voluntarily; in giving weight and credence to the testimony of the prosecution's only eyewitness; in discrediting their defense of alibi; and in imposing the death penalty despite the absence of conspiracy.

We are not impressed by the appellants' insistence that their extra-judicial confessions were involuntary. Extrajudicial confessions of the accused in a criminal case are universally recognized as admissible evidence against him, and this rule is based on the presumption that no one would declare anything against himself unless such declarations were true. Accordingly, it has been held that a confession constitutes an evidence of a high order since it is supported by the strong presumption that no person of normal mind would deliberately and knowingly

---

[17] pp. 36-38, t.s.n., September 9, 1970.

[18] pp. 53-54, Record.

Supreme Court E-Library

confess to a crime unless prompted by truth and his conscience.[19] Hence, the presumption of the law is in favor of the spontaneity and voluntariness of the statement given by an accused, and it is incumbent upon him to destroy that presumption.[20] The appellants, in the case at bar, failed in the exercise of that task. They have not adduced any evidence to overcome this presumption except their retraction of their extra-judicial confessions. *On the other hand, We find that there is nothing* on the face of their respective confessions to cast doubt upon the integrity. Their answers to the questions are responsive and informative, which reflects spontaneity and coherence. It contains details which could not have been fabricated by the NBI investigators and which could have been supplied only by the appellants themselves. Thus, for example, in his sworn statement the appellant Osmundo Castañeda declared that he is 25 years old, married, a driver of an ice delivery truck, and a resident of 34 Electrical Road, Domestic Airport, Pasay City; That he reached only first year high school; that Juanito Raguro has a tattoo of a woman on his shoulder which was subsequently confirmed.[21] On the other hand, the appellant Juanito Raguro stated in his sworn statement that he is 25 years old, single, and residing at 240-E. H. Domingo, Pasay City; that he reached only grade six; that he knows how to read and write Tagalog. Besides, their confessions substantially interlock, confirming each other as to the details, and are corroborated by Teresita Nobello, the prosecution's eyewitness to the crime. These circumstances negate the appellants' claim of involuntariness. Besides, the fact that they did not immediately denounce the alleged threats and maltreatment, or file any complaint against the NBI agents who allegedly threatened and maltreated them further belie their claim of involuntariness. In the main, We

---

[19] *Magtoto, et al. vs. Manguera, et al.*, L-37201-02, March 3, 1975, 63 SCRA 4; See also *Francisco on Evidence*, Vol. VII, 1973 Ed., pp. 364-365.

[20] *People vs. Pareto*, L-20894, Dec. 29, 1967, 21 SCRA 1469, citing *People vs. Garcia*, 101 Phil. 616; *People vs. Dorado*, L-23464, Oct. 31, 1969, 30 SCRA 53; *People vs. Manobo*, L-19798, Sept. 20, 1966, 19 SCRA 30.

[21] Exhibit "H-1", p. 102, Record; pp. 4-5, t.s.n., August 10, 1970.

Supreme Court E-Library

are fully convinced that the appellants herein freely and voluntarily executed their respective confessions.

The appellants assail the trial court in giving weight and credence to the testimony of prosecution witness Teresita Nobello, claiming that her testimony is incredible and improbable, and that, it is inconsistent with her sworn statement. Thus, they argue that her testimony that she went to Baclaran to hear mass at 3:00 o'clock in the morning of March 1, 1970, and that when she reached the place where the crime was committed, she heard a shout or scream, is untrue as it is incredible and improbable because Holy Masses or any other kind of religious services are not celebrated at 3:00 o'clock in the morning. Further, that being deaf and dumb she could not have heard the alleged shout or scream which drew her attention to the incident in question.

The appellants' contention is untenable. Assuming for the sake of argument, that some portions of the testimony of Teresita Nobello are incredible and improbable, nevertheless, the same are insufficient to discredit the whole of her testimony. The trial court is not bound to believe all that the said witness has said, but it may give weight and credence to such portions of her testimony as it may deem worthy of belief and disbelieve the other portions of her testimony. Thus, as one authority puts it:

"*Triers of facts are not bound to believe all that a witness has* said; they may accept some portions of his testimony and reject other portions, according to what seems to them, upon other facts and circumstances, to be the truth. x x x. Even when witnesses are found to have deliberately falsified in some particulars, the jury are not required to reject the whole of their uncorroborated testimony, but may credit such portions as they may deem worthy of belief."[22]

As was stated by this Court:

"It is perfectly reasonable to believe the testimony of a witness with respect to some facts and disbelieve it with respect to other

---

[22] 1 Moore on Facts, p. 23, quoted with approval in *People vs. Keller*, 46 O.C. No. 6, pp. 3222-3223. See also *People vs. Li Bun Juan*, L-11077, August 23, 1966, 17 SCRA 934.

Supreme Court E-Library

facts. As it has been aptly said even when witnesses are found to have deliberately falsified in some material particulars, it is not required that the whole of their uncorroborated testimony be rejected, but such portions thereof deemed worthy of belief may be credited."[23]

In this regard, it would suffice to state that the trial court by reason of its proximate contact with witnesses, is in a more competent position to discriminate between the true and the false, and in the case at bar, We find no reason to disturb its conclusion that the said witness of the prosecution saw the incident in question.

As to the alleged inconsistencies in the testimony of the said witness and her sworn statement, [24] it suffices to state that the same refer to minor and collateral matters which do not affect her credibility. On the contrary, it heightens her credibility as it shows that her testimony was neither coached nor rehearsed. Far from being evidence of falsehood it could justifiably be regarded as a demonstration of her good faith.[25] Besides, it may also be pointed out that Teresita Nobello did not know personally any of the accused before the crime was committed.

---

[23] *People vs. Malillos*, L-26568, July 29, 1968, 24 SCRA 133. See also *People vs. Mabuyo*, L-29129, May 8, 1975, 63 SCRA 532; *People vs. Roxas*, L-32912, Oct. 29, 1976, 73 SCRA 583.

[24] On Page 7 of their brief, the appellants point to the following inconsistencies:

> "a) She claimed in her testimony that appellant Castañeda took the wallet and the watch (TSN, June 18, 1970, p. 13) whereas in Exh. D, she declared that the person who stabbed the victim was the same person who took the wallet and the watch and that Castañeda was merely acting as the lookout man. That appellant Raguro took part in the taking off of the shoes was her statement in Court while in her signed statement the one who took the shoes off was the same man who stabbed the victim. (TSN, June 18, 1970, pp. 14, 15 and 16).
>
> "b) That she went to Baclaran from a motel (Exh. "D", 64) whereas in her direct testimony she claimed to have come from her father's residence in Quezon City (TSN, June 19, 1970, pp. 7 and 8)."

[25] *People vs. Reyes*, L-33154, Feb. 27, 1976, 69 SCRA 474; *People vs. Estocada*, L-31024, Feb. 28, 1977, 75 SCRA 295.

Supreme Court E-Library

Neither did she know the victim. She had no motive to fabricate evidence against the appellants implicating them in so grave a crime as robbery with homicide. The absence of any improper motive on her part to make a false imputation against the herein appellants further strengthens her credibility.[26]

The appellants further contend that the said witness lacks the requisite qualifications of a witness, being a deaf-mute. This is equally without merit. The mere fact that she is a deaf-mute is insufficient to justify a finding that she is an incompetent witness,[27] so long as she can perceive, and perceiving she can make known her perception to others.[28] In the case at bar, the trial court ascertained whether the said witness has the requisite intelligence and ability to convey and make known her perception to others. After such a determination, the trial court found her to be a competent witness, and allowed her to testify thru qualified interpreters. In fact she was able to make a detailed narration of the events, unfolding them one after the other as she saw them happen. We find, therefore, no reason to disagree with the trial court's conclusion as to her competence as a witness.

At any rate, even if the testimony of the said witness is left wholly out of consideration, still there is sufficient basis for conviction, for a confession corroborated by evidence of *corpus delicti* will suffice. It is not indispensable that an eye-witness should have seen the commission of the crime before an accused may be held liable under his own confession. Otherwise, the usefulness of the confession as a species of proof would vanish if it were necessary, in addition to the confession to adduce evidence sufficient to justify conviction independently of such confession.[29]

---

[26] *People vs. Ancheta*, L-29581-82, Oct. 30, 1974, 60 SCRA 333.

[27] *People vs. Sasota*, 52 Phil. 281; *People vs. De Leon*, 50 Phil. 539.

[28] Sec. 18, Rule 130, Revised Rules of Court.

[29] *People vs. Narciso*, L-24484, May 28, 1968, 23 SCRA 844; *People vs. Dorado*, L-23464, Oct. 31, 1969, 30 SCRA 53.

Supreme Court E-Library

Again, the appellants' contention that the trial court committed an error in rejecting their defense of alibi is likewise devoid of merit. The rule is well-settled, to the point of being trite, that the defense of alibi, which is easy to concoct, must be received with utmost caution, for it is one of the weakest defenses that can be resorted to by an accused,[30] hence, to be successful, it must be proven by positive, clear and satisfying evidence, reasonably satisfying to the mind of the court of the truth of such defense.[31] Where nothing supports it except the testimony of relatives and friends — as in the present case — the said defense weighs and is worth nothing.[32] Besides, the rule is to the effect that for alibi to prosper, it is not enough to prove that he was somewhere else when the crime was committed but the defendant must likewise demonstrate that it was physically impossible for him to have been at the scene of the crime at such time. Appellant Osmundo Castañeda's alibi does not meet this requirement. In any event, their defense of alibi pales into insignificance considering that they had already admitted in their respective confessions their participation in the crime. Obviously, such defense cannot prevail over their confessions which they freely and voluntarily executed.[33]

Finally, the appellants dispute the trial court's imposition of the death penalty. Their contention is that, assuming that there was conspiracy to commit robbery, the killing of the victim was not a part of the conspiracy. Hence, they should be held liable only for robbery, while their co-accused who actually killed the victim is the one responsible for the crime of robbery with homicide. This contention is untenable. Once conspiracy to commit robbery is admitted or conceded, the appellants herein

---

[30] *People vs. Cortez, et al.*, L-31106, July 31, 1974, 57 SCRA 308.

[31] *People vs. Llamera*, L-21804-5-6, May 25, 1973, 51 SCRA 48.

[32] *People vs. Baniaga*, L-14905, Jan. 28, 1961, 1 SCRA 283; *People vs. Ricaplaza*, L-25856, April 29, 1968, 23 SCRA 374.

[33] *People vs. Luna*, L-28812, July 31, 1974, 58 SCRA 198; *People vs. Fontanosa*, L-19421, May 29, 1967, 20 SCRA 249.

Supreme Court E-Library

are liable for the crime of robbery with homicide, whether or not they actually participated in the killing of the victim, for the rule is settled that when homicide takes place as a consequence or on the occasion of the robbery, all those who took part in the robbery shall be guilty as principals of the complex crime of robbery with homicide whether or not they actually participated in the killing, unless there is proof that they had endeavored to prevent the killing.[34] The appellants, therefore, are liable as principals in the crime of robbery with homicide.

---

[34] *People vs. Puno*, L-31594, April 29, 1974, 56 SCRA 659; *People vs. Espejo*, L-27708, Dec. 10, 1970, 36 SCRA 400; *People vs. Pujinio*, L-21690, April 29, 1969, 27 SCRA 1185; *People vs. Atencio*, L-22518, Jan. 17, 1968, 22 SCRA 88.

In the case of *People vs. Espejo, supra*, this Court held:

"Tabios now contends that even granting that he was aware of the plan of his co-accused to commit the crime of robbery he should not be held liable for the crime of robbery with homicide because the killing of the Chinaman was not a part of the conspiracy, invoking the case of *People vs. Basistan, et al.*, 47 Phil. 493, wherein this Court held:

'Where it appears that only one of the defendants committed homicide at the time of perpetrating the robbery said homicide not having been the subject of the conspiracy, nor the others having had any intervention in said homicide, the author of the homicide is the only one responsible for the complex crime of robbery in band with homicide, the other defendants being responsible only for the robbery in band.'

"In *People vs. Rogel*, G.R. No. L-15318, March 31, 1962 (4 SCRA 807) where the accused also invoked the ruling in *People vs. Basistan*, this Court rejected his view, thus:

'We do not share appellant's view in this respect for as early as 1926, one year after We enunciated the ruling in the Basistan case, *supra*, We decided to revert to the former doctrine laid down in *U.S. vs. Macalalad*, 9 Phil. 1, in the following language: —

'x x x The Supreme Court of Spain, interpreting the provisions of the Penal Code touching the crime of *ROBO CON HOMICIDO*, has frequently decided that, where the complex crime has been committed, *all those who took part as principals in the commission of the robbery are guilty as principals in the commission of the crime of ROBO CON HOMICIDO*, unless it appears that they endeavored to prevent the unlawful killing. (Decisions of the Supreme Court of

Supreme Court E-Library

The appellants invoke the mitigating circumstance of voluntary surrender for the reason that they never resisted the authorities when they were arrested. This is without merit. The fact that they did not resist the authorities when they were arrested does not amount to voluntary surrender. A surrender to be voluntary must be spontaneous, showing the intent of the accused to submit himself unconditionally to the authorities. In the case at bar, there is no voluntary surrender to speak of because the appellants were in point of fact arrested.[35]

Upon the other hand, treachery attended the killing. The attack against the deceased who was unarmed, was sudden and unexpected, without any warning and without giving him an opportunity to defend himself. The aggravating circumstance of abuse of superior strength is likewise present, however, the same is absorbed in treachery. It cannot be estimated as an

---

Spain, April 30 and February 23, 1872, and June 9, 1890. See also Viada, Vol. 3, pp. 347, 354, and 356). (Italics supplied).'

"Thus, in *People vs. Bautista, et al.*, 49 Phil. 389 (1926). We held that: —

'x x x Whenever a homicide has been committed as a consequence or on the occasion of a robbery, all those who took part as principals in the commission of the robbery will also be held guilty as principals in the complex crime of robbery with homicide *although they did not actually take part in the homicide*, unless it is clearly appeared that they endeavored to prevent the homicide (*U.S. vs. Macalalad*, 9 Phil. 1).' (Italics supplied).

"The same ruling was applied in many subsequent cases, among them *People vs. Atencio*, G.R. No. L-22518, (Jan. 18, 1968) where this Court held that while the appellants therein might not have participated in the slaying of the victims, nevertheless, they were liable for the crime actually committed, for the rule is settled that when homicide takes places as a consequence or on the occasion of a robbery, all of those who took part in the robbery shall be guilty as principals of the complex crime of robbery with homicide unless there is proof that they had endeavored to prevent the killing, citing the cases of *People vs. de Rosa*, 90 Phil. 365; *People vs. Libre*, 93 Phil. 5; *U.S. vs. Macalalad*, 9 Phil, 1: *U.S. vs. Santos*, 4 Phil. 189. The same ruling was reiterated in *People vs. Pujinio*, G.R. No. L-21690, April 29, 1969 (27 SCRA 1185) citing *People vs. Morados*, 70 Phil. 558; and *People vs. Carumungan, et al.*, G.R. No. L-13283, September 30, 1960."

[35] *People vs. Reyes, supra.*

Supreme Court E-Library

independent aggravating circumstance when treachery is present.[36]

Robbery with homicide is punished by *reclusion perpetua* to death.[37] There being one aggravating circumstance and no mitigating circumstance, the trial court correctly imposed the death penalty.[38]

WHEREFORE, *finding no error in the appealed decision,* the same is hereby affirmed, with costs against the appellants.

SO ORDERED.

Teehankee, Barredo, Makasiar, Antonio, Aquino, Concepcion Jr., Guerrero, Abad Santos, De Castro, and *Melencio-Herrera, JJ.*, concur.

Fernando, C.J., and *Fernandez, J.,* took no part.

Santos, J., on leave.

---

[36] Aquino, *Revised Penal Code*, 1976 Ed., Vol. I, p. 348, citing *Jamino*, 3 Phil. 102; *Bastas*, 5 Phil. 251; *Vitug*, 17 Phil. 1; *Domingo and Dolor*, 18 Phil. 250; *Estopia*, 28 Phil. 97; *Redoña*, 87 Phil. 743; *Davelos*, 16 SCRA 47; *Agustin*, 16 SCRA 467; *Reyes*, 20 SCRA 304; *Nabunal*, 28 SCRA 747; *Lumantas*, 28 SCRA 764; *Layson*, 30 SCRA 92; *Abletes*, 58 SCRA 241.

[37] Art. 294, par. 1, Revised Penal Code.

[38] Art. 63, par. 1, Revised Penal Code.