

408 Phil. 532

SECOND DIVISION

[G.R. No. 113269, April 10, 2001]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. OSCAR CONDE Y LUTO, ALLAN ATIS Y ABET AND ALEJANDRO PEREZ, JR. Y CARSILLAR, ACCUSED, OSCAR CONDE Y LUTO, ALLAN ATIS Y ABET, ACCUSED-APPELLANTS.

D E C I S I O N

QUISUMBING, J.:

On appeal is the decision^[1] dated December 15, 1993, of the Regional Trial Court, Branch 129, Kalookan City finding accused Oscar Conde, Allan Atis and Alejandro Perez, Jr., guilty of the special complex crime of robbery with homicide and sentencing each of them to suffer the penalty of *reclusion perpetua* with the accessory penalties under the law, and to jointly and severally indemnify the heirs of each of the victims, Sukhdev Singh and Biant Singh, in the amount of P50,000.00.

Accused Oscar Conde, Allan Atis and Alejandro Perez, Jr., were arraigned in an Information which reads:

That, on or about the 25th day of May, 1992 in Kalookan City, Metro Manila and within the jurisdiction of this Honorable Court, the above-named accused, conspiring together and mutually helping one another, with intent to gain and by means of threats and intimidation upon the persons of SUKHDEV SINGH Y DHALNAL and BIAN SINGH Y SIDHU, did then and there wilfully, unlawfully and feloniously take, rob and carry away cash of unestimated amount and assorted merchandise such as umbrellas and beach towels, that on the occasion of the said robbery and for the purpose of enabling them to take, rob and carry away the aforementioned articles, the herein accused in pursuance of their conspiracy, did then and there wilfully, unlawfully and feloniously and with intent to kill, attack and stab with bladed weapons upon the persons of SUKHDEV SINGH Y DHALNAL and BIAN SINGH Y SIDHU on the different parts of the body, thereby inflicting upon said victims serious physical injuries which caused their death on the above-specified date.

CONTRARY TO LAW.^[2]

The accused entered pleas of not guilty.

During trial, the prosecution presented the testimonies of Apollo Romero, PO3 Rodencio Sevillano, and Dr. Mario Gajardo as witnesses.

Apollo Romero, a resident of Santolan Street, Kalookan City, Metro Manila, testified that on May 25, 1992 at about 8:00 A.M., he was home sitting by the window and drinking coffee when he saw four men in Santolan Street block the path of two Indian nationals (*bombay*) on a motorcycle. One of the men later identified as Oscar Conde poked a gun at the two Indians while his three companions approached and stabbed the Indians. He later identified the other two assailants as Alejandro Perez, Jr., and Allan Atis. He also saw Allan Atis take the goods^[3] which were being sold by the two Indians on installment. After the stabbing, the four men fled from the crime scene towards Mabolo Street. The fourth assailant remained unidentified. Romero was about 25 to 35 meters away from the place where the crime was committed.^[4] PO3 Rodencio Sevillano, testified that he was assigned with the Intelligence and Investigation Division (IID) of the PNP, Kalookan City. On May 25, 1992, he was told to investigate the abovesited incident. On May 30, 1992, the police arrested the three accused. Police recovered the weapons used in the robbery, when Felicidad Macabare, Conde's wife, went to the police station to talk to the accused. These weapons were discovered inside her bag after a routine inspection. Sevillano admitted, however, that they did not have a warrant of arrest when they apprehended the accused. Nor did they have a search warrant when they inspected Felicidad's bag and when they searched the house of a certain Jimmy where they found the stolen items.^[5] Dario Gajardo, a doctor employed in the PNP Crime Laboratory Service at Station 4, Central Police District, Quezon City performed the *post-mortem* examination on the bodies of Sukhdev Singh and Biant Singh. He testified that the cause of death was cardio-respiratory arrest due to shock and hemorrhage secondary to stab wounds. Biant Singh sustained stab wounds on his lower stomach while Sukhdev Singh sustained stab wounds at the back and right portion of the ribs.^[6] The defense presented five witnesses: Alejandro Perez, Jr., Oscar Conde, Allan Atis, Danilo Acutin and Anita Santos.

Alejandro Perez, Jr. testified that Oscar Conde and Allan Atis were his townmates from Catbalogan, Samar. According to Perez, on May 25, 1992, at about 7:00 A.M., he went to the Madrigal Compound at Las Piñas, Metro Manila, to visit his cousin Danilo and apologize for not attending his uncle's 40th death anniversary and their fiesta. Upon his arrival they went to the Pulang Lupa Cemetery and visited the graves of his uncle and their grandfather. From the cemetery, they went home where they drank some beer until late afternoon. Together with Oscar Conde and Allan Atis, he was arrested in Tandang Sora, Quezon City on May 30, 1992.^[7] Danilo Acutin corroborated Alejandro's testimony.^[8] Oscar Conde testified that on May 25, 1992, he was in Barangay Polo Street, Parañaque mending his fishing net. He was with his wife, Felicidad Macabare; and his uncle, Tancio Loto. He said the police arrested Alejandro Perez, Jr., Allan Atis, Felicidad Macabare and him in Tandang Sora, Quezon City on May 30, 1992.^[9] (Later reports indicated, however, that Felicidad was not among those arrested.^[10])

Allan Atis stated that he was in MCU where he worked as a construction worker for a certain Romy Ramos on May 25, 1992. He denied having anything to do with the death of the two Indian nationals.^[11] On December 15, 1993, the trial court rendered its

decision, thus:

WHEREFORE, premises considered, this Court finds the accused Oscar Conde y Lutoc, Allan Atis y Abet and Alejandro Perez, Jr. y Carsillar guilty beyond reasonable doubt of the special complex crime of Robbery with Homicide as defined and penalized under Article 294, paragraph 1 of the Revised Penal Code, in relation to the *Solis* ruling. Accordingly, the 3 accused shall each serve the penalty of *Reclusion Perpetua*, with all the accessory penalties under the law.

Pursuant to Section 7, Rule 117 of the 1985 Rules on Criminal Procedure, as amended, the 3 accused shall be credited with the period of their preventive detention.

By way of compensatory damages, the accused shall jointly and severally indemnify the heirs, if any, of deceased SUKHDEV SINGH and BIAN T SINGH in the sum of P50,000.00 for each, without subsidiary imprisonment in case of insolvency.

SO ORDERED.^[12]

The three accused appealed. However, the counsel *de parte* for accused Alejandro Perez, Jr., Atty. Jose M. Marquez, failed to file brief for Perez, prompting this Court to dismiss his appeal. The decision of the trial court became final and executory with respect to accused Alejandro Perez, Jr.^[13] Hence the present appeal concerns now only appellants Atis and Conde, who filed their separate briefs.

Atis avers that the trial court erred:

I

...IN GIVING WEIGHT AND CREDENCE TO THE TESTIMONY OF THE PROSECUTION WITNESSES AND IN DISREGARDING THE CLAIM OF THE DEFENSE.

II

...IN FINDING ACCUSED-APPELLANT ALLAN ATIS GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF ROBBERY WITH DOUBLE HOMICIDE DESPITE OF THE INSUFFICIENCY OF EVIDENCE.^[14]

Atis argues that the prosecution failed to establish his identity as one of the perpetrators of the crime. He alleges that Apollo Romero only saw him in court. Atis likewise claims that he was arrested without any warrant of arrest several days after

the crime.^[15] Oscar Conde avers that the trial court erred in:

I

...NOT HOLDING THE ARREST OF THE ACCUSED ILLEGAL

II

...ACCORDING THE TESTIMONIES OF PROSECUTION WITNESSES APOLLO ROMERO AND PO3 RODENCIO SEVILLANO FULL CREDENCE

III

...HOLDING THE ACCUSED GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF ROBBERY WITH DOUBLE (sic) HOMICIDE.^[16]

Oscar Conde claims that he was illegally arrested by the authorities. He adds that the Indian Embassy was pressuring the police to solve the murder. He avers that the testimony of Romero is insufficient to sustain his conviction. He cites the delay of Romero in reporting what he saw, hence Romero's testimony is unbelievable. Lastly, Conde wants this Court to disregard as evidence the stolen items and weapons illegally seized by the police.^[17] The Office of the Solicitor General, for its part, filed its appellee's brief only in regard to Oscar Conde's appeal. According to the OSG, the testimony of Apollo Romero deserves full faith and credence since the appellants failed to show any improper motive on his part. The same is true for the testimony of PO3 Sevillano who also enjoys the presumption of regularity in the performance of his official duties. In conclusion, the Solicitor General prays that the conviction of the appellants be affirmed. Citing *People vs. Escandor*, 265 SCRA 444, 445 (1996), the OSG stresses that the findings of the trial court, especially on the credibility of witnesses, are generally accorded great weight and respect on appeal, because the trial court is in the best position to make an honest determination of the witnesses' behavior and deportment during trial.^[18] In substance, the issues raised by both appellants are (1) Whether or not the identification made by Apollo Romero deserves credence; (2) Whether or not the arrests of the appellants were illegal; (3) Whether or not the alleged stolen objects, i.e., the beach towel and umbrella, can be presented in evidence.

Anent the first issue, we are in agreement with the submission by the Office of the Solicitor General. First, factual findings of the trial court are conclusive upon this Court and its evaluation regarding the credibility of witnesses are given great weight and respect **unless** there is a showing that the trial court had overlooked, misunderstood or misapplied some fact or circumstance of weight and substance that would have affected the result of the case.^[19] Being in a better position to observe the witnesses for the prosecution as well as the defense, the trial court's appreciation of their testimony, truthfulness, honesty and candor deserves the highest respect.^[20] Allan Atis insists that it was impossible for Romero to have identified him since Romero only saw him

inside the court room and that Romero had not seen him before. However, there is nothing in law and jurisprudence which requires, as a condition *sine qua non* for the positive identification by a prosecution witness of a felon, that witness must first know the latter personally.^[21] The fact that Romero never saw Atis before the crime was committed does not detract from the credibility and reliability of Romero's testimony.

Oscar Conde insists that the delay of Romero in reporting the incident makes his testimony unworthy of credence. It is however well settled in jurisprudence that delay in divulging the names of perpetrators of a crime, if sufficiently explained, does not impair the credibility of the witness and his testimony.^[22] Likewise, credibility is not affected by the initial reluctance of witnesses to volunteer information.^[23] It is not uncommon for witnesses to a crime to show some reluctance about getting involved in a criminal case as, in fact, the natural reticence of most people to get involved is of judicial notice.^[24] Romero categorically identified both Oscar Conde and Allan Atis as two of the perpetrators of the crime. Appellants failed to adduce any improper motive on his part which would motivate him to implicate them in the said crime. Absent such motive, the testimony Romero should be accorded full faith and credence as the testimony of a disinterested party who only wants to see justice upheld.^[25] The two appellants interposed the negative defenses of alibi and denial. But as held in several cases, these defenses cannot overcome the straightforward testimony and the positive identification made by a prosecution witness.^[26] We now turn to the appellant's vehement assertion that they have been illegally arrested. The records of the case will show that the arrests of the appellants came after the lapse of 5 days from the time they were seen committing the crime. At the time they were arrested, the police were not armed with any warrants for their arrests. Section 5 of Rule 113, of the Revised Rules of Criminal Procedure^[27] enumerates the instances when an arrest can be made without warrant, namely:

- (a) When, in his presence the person to be arrested has committed, is actually committing, or is attempting to commit an offense;
- (b) When an offense has in fact just been committed, and he has probable cause to believe based on personal knowledge of facts or circumstances that the person to be arrested has committed it; and
- (c) When the person to be arrested is a prisoner who has escaped from a penal establishment or place where he is serving final judgment or temporarily confined while his case is pending, or has escaped while being transferred from one confinement to another.

None of the above circumstances is present in this case. Appellants were merely walking along Tandang Sora Avenue and were not committing any crime. Neither can it be said that the crime had just been committed. Five days had already passed from the time of the robbery with homicide. It cannot also be said that the arresting officers had probable cause based on personal knowledge. PO3 Sevillano admitted that they

learned about the suspects from Apollo Romero and certain unnamed informants. The third circumstance is patently not present. The lapse of five days gave the police more than enough time to conduct surveillance of the appellants and apply for a warrant of arrest. Clearly, appellants' rights provided in Sec. 2, Art. III of the Constitution^[28] were violated.

Unfortunately, appellants did not assert their constitutional rights prior to their arraignment. This is fatal to their case. An accused is estopped from assailing the legality of his arrest if he failed to move for the quashing of the Information against him before his arraignment.^[29] When the appellants entered their pleas on arraignment without invoking their rights to question any irregularity, which might have accompanied their arrests, they voluntarily submitted themselves to the jurisdiction of the court and the judicial process.^[30] Any objection, defect, or irregularity attending their arrests should had been made before they entered their pleas.^[31] It is much too late for appellants to raise the question of their warrantless arrests. Their pleas to the information upon arraignment constitute clear waives of their rights against unlawful restraint of liberty.^[32] Furthermore, the illegal arrest of an accused is not sufficient cause for setting aside a valid judgment rendered upon a sufficient complaint after trial free from error.^[33] The warrantless arrest, even if illegal, cannot render void all other proceedings including those leading to the conviction of the appellants and his co-accused, nor can the state be deprived of its right to convict the guilty when all the facts on record point to their culpability.^[34] As for the stolen objects presented in evidence, their seizure is assailed by appellants. We agree that the warrantless search in the house of a certain Jimmy, based on the confession of accused Alejandro Perez, Jr.,^[35] is definitely questionable. PO3 Rodencio Sevillano categorically stated that they were able to recover the stolen items, i.e., the beach towel and the umbrella, because of the confession of Alejandro Perez, Jr. who was not assisted by counsel when he confessed and eventually led the police to the whereabouts of the said items.^[36] The use of evidence against the accused obtained by virtue of his testimony or admission without the assistance of counsel while under custodial investigation is proscribed under Sections 12 and 17, Article III of the Constitution.^[37] Under the libertarian exclusionary rule known as the "fruit of the poisonous tree", evidence illegally obtained by the state should not be used to gain other evidence because the illegally obtained evidence taints all evidence subsequently obtained.^[38] Simply put, the objects confiscated at said house are inadmissible as evidence.

Without the stolen objects as evidence, we are left with only the testimony of Apollo Romero that he saw Allan Atis take the beach towel and the umbrella.^[39] a reading of the said testimony will indicate that such was not categorical and straightforward, to wit:

Q: And can you tell us, Mr. Witness, more or less what did Allan Atis did (sic)?

A: Yes, mam.

Q: What?

A: He stabbed one of the Indian Nationals at the back.

- Q: Can you still recall with what instrument did Allan Atis used (sic) in stabbing the Indian National at the back.
- A: I cannot recall anymore, mam.
- Q: What about Alejandro Perez, what did he do?
- A: Allan Atis was the one who took the goods being sold by the Indian Nationals in installment.
- Q: Who took the goods? Will you please identify the person who took the goods from the Indian Nationals?
- A: The one wearing the white t-shirt.
- Atty. Yson
Witness pointed to a person wearing a white t-shirt who when asked answered by the name of Allan Atis.^[40]

The identification of Allan Atis by Apollo Romero as the one who took the items was more of an afterthought and was not even responsive to the question made by the prosecutor. Aside from this, the ownership of the towel and the umbrella was not even established. In order to sustain a conviction for robbery with homicide, robbery must be proven as conclusively as the killing itself, otherwise, the crime would only be homicide or murder, as the case may be.^[41] In this case, only the facts and causes of deaths were established with moral certainty. Hence, there can be no robbery with homicide. The appellants are only liable for two counts of homicide.

On the other hand, we find in order the search of the bag of Felicidad Macabare, at the time she was visiting her husband who was a detainee. PO3 Sevillano testified, this search is part of police standard operating procedure,^[42] and is recognized as part of precautionary measures by the police to safeguard the safety of the detainees as well as the over-all security of the jail premises. However, the weapons^[43] confiscated from Felicidad Macabare, were not formally offered as evidence by the prosecution,^[44] hence probatively valueless.^[45] **WHEREFORE**, the assailed decision of the Regional Trial Court of Kalookan City, Branch 129, finding the appellants Oscar Conde and Allan Atis guilty of robbery with homicide is hereby MODIFIED. They are declared guilty only of two counts of homicide and each is hereby sentenced to suffer the indeterminate sentence of six (6) years and one (1) day of *prision mayor* to fourteen (14) years, eight (8) months, and one (1) day of *reclusion temporal* for each count of homicide. They are likewise ordered to indemnify jointly and severally the heirs of each of the victims, Sukhdev Singh and Biant Singh, in the amount of P50,000.00, and to pay the costs.

SO ORDERED.

Bellosillo, (Chairman), Mendoza, Buena, and De Leon, Jr., JJ., concur.

^[1] *Rollo*, pp. 15-21.

^[2] *Id.* at 3.

[3] (1) beach towel and (1) umbrella

[4] TSN, August 19, 1992, pp. 2-20.

[5] *Id.* at 29-44.

[6] TSN, October 6, 1992, pp. 2-24.

[7] TSN, November 23, 1992, pp. 3-11.

[8] TSN, February 8, 1993, pp. 3-11.

[9] TSN, March 1, 1993, pp. 3-21.

[10] TSN, August 19, 1992, p. 21.

[11] TSN, June 14, 1993, pp. 2-9.

[12] *Rollo*, pp. 20-21.

[13] *Id.* at 100.

[14] *Id.* at 69.

[15] *Id.* at 77-81.

[16] *Id.* at 144.

[17] *Id.* at 146-155.

[18] *Id.* at 176.

[19] *People vs. Tejada*, 170 SCRA 497, 501-502 (1989); *People vs. Ablaza*, 30 SCRA 173 (1969); *People vs. Carido*, 167 SCRA 462 (1988).

[20] *People vs. Sañez*, 320 SCRA 805, 815 (1999); *People vs. De los Santos*, 314 SCRA 303 (1999); *People vs. Almacin*, 303 SCRA 399 (1999).

[21] *People vs. Bracamonte*, 257 SCRA 380, 391 (1996).

[22] *People vs. Merino*, 321 SCRA 199, 213 (1999); *People vs. Tumaru*, 319 SCRA 515 (1999).

[23] *People vs. Rada*, 308 SCRA 191, 203 (1999).

[24] *People vs. Lagmay*, 306 SCRA 157, 177 (1999).

[25] *People vs. Tahop*, 315 SCRA 465, 472-473 (1999); *People vs. Francisco*, 315 SCRA 114 (1999).

[26] *People vs. Patalin, Jr.*, 311 SCRA 186, 205 (1999); *People vs. Macuha*, 310 SCRA 14 (1999); *People vs. Agsunod, Jr.*, 306 SCRA 612 (1999).

[27] Took effect December 1, 2000.

[28] Sec. 2. The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized.

[29] *People vs. Khor*, 307 SCRA 295, 326 (1999); See also Sec. 9, Rule 117 of the Revised Rules of Criminal Procedure which took effect December 1, 2000.

[30] See *People vs. Del Rosario*, 305 SCRA 740, 760-761 (1999).

[31] *People vs. Patalin, Jr.*, 311 SCRA 186, 207 (1999).

[32] *People vs. Briones*, 202 SCRA 708, 719 (1991).

[33] *People vs. De Guzman*, 224 SCRA 93, 100 (1993).

[34] *People vs. Manlulu*, 231 SCRA 701, 710 (1994); *People vs. De Guia*, 227 SCRA 614, 626 (1993).

[35] TSN, August 19, 1992, p. 27.

[36] *Id.* at 35.

[37] *People vs. Rodendero*, 320 SCRA 383, 399.

[38] *Ibid.*

[39] TSN, August 19, 1992, pp. 7-8.

[40] *Id.* at 6-7.

[41] People vs. Teodoro, 280 SCRA 384 (1997).

[42] TSN, August 19, 1992, pp. 34-35.

[43] One paltik, smith and Wesson, 5 live ammunitions and 2 daggers.

[44] Records, pp. 85-86.

[45] Ong vs. Court of Appeals, 301 SCRA 387 (1999).



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