

## EN BANC

**[ G.R. No. 142870, November 14, 2001 ]**

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
DINDO PAJOTAL Y FETALCORIN; RANDY GABAY (AT LARGE) AND  
LINDO GABAY (AT LARGE), ACCUSED.**

**DINDO PAJOTAL Y FETALCORIN, ACCUSED-APPELLANT.**

### D E C I S I O N

#### PER CURIAM:

This case is here on automatic review of the decision,<sup>[1]</sup> dated February 7, 2000, of the Regional Trial Court of Oriental Mindoro, Branch 43, finding accused-appellant Dindo Pajotal guilty of the special complex crime of robbery with homicide and sentencing him to suffer the penalty of death.

The Information<sup>[2]</sup> against accused-appellant and two others charged the following:

"That on or about the 21st day of October, 1996, at about 2:45 in the afternoon, at Sitio Mabaho, Barangay Cabalwa, municipality of Mansasalay, province of Oriental Mindoro, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused Randy Gabay alias Randy Montessa, Lindo Gabay and Dindo Pajotal, conspiring, and confederating together and helping each other, with intent to kill and to gain, did, then and there willfully, unlawfully and feloniously rode a jeep owned and driven by Winefred Espina and by means of force and violence upon their victim, take and carry away FIFTEEN THOUSAND (P15,000.00) PESOS, Philippine Currency, and accused, pursuant to their conspiracy during the commission of the robbery and on the such occasion thereof and for the purpose of enabling them to take, steal and carry away with them the said amount of P15,000.00, did, then and there willfully, unlawfully and feloniously attack, assault and stab one Winefred Espina with a bladed instrument, inflicting upon the latter [stab] wounds on the different parts of his body thereby causing direct and immediate death of said Winefred Espina.

"That in the commission of the crime the qualifying circumstances of treachery and evident premeditation and the aggravating circumstance - of abuse of superior strength were present.

"CONTRARY TO LAW."

The facts are as follows:

On October 21, 1996, at around 2:45 p.m., Winefred Espina was driving a

passenger jeepney, accompanied by his nephew, Arnold Bugayon, who was also seated in front beside the former. They had just come from Bulalacao where they delivered some merchandise. Just before they reached Sitio Mabaho, Mansalay, Oriental Mindoro, three men stopped them on the road. The three men boarded the vehicle, with one of them clinging to the left front side near Espina, while the other man sat beside Bugayon. The third man hung at the rear of the jeepney with his feet standing on the platform or "*parilla*." Bugayon identified the man who sat to his right side on the front seat as Dindo Pajotal.<sup>[3]</sup>

In Sitio Mabaho, one of the three men ordered Espina to stop the vehicle, to which the latter replied, "*Pare walang ganyanan*." (Pal, don't do this.) The three men then asked for money, but Espina refused to give it to them. Accused-appellant thus poked a knife at Bugayon and threatened to kill him if Espina did not hand over the money. As Bugayon frantically asked his uncle to do as the men asked, Espina handed his money to the person on his left. Although he got the money, the man stabbed Espina on the left thigh, apparently to prevent any attempt by Espina to get the money back. Espina decided to fight back and alighted from the jeepney.<sup>[4]</sup>

At this point, accused-appellant also alighted from the vehicle and attempted to stab Bugayon. He missed as Bugayon got out of the vehicle by passing through the driver's side. Bugayon saw accused-appellant and his companions ganging up on Espina. Accused-appellant stabbed Espina. Bugayon tried to help his uncle, but one of the men, who was also holding a knife, stopped him and said "*O ano, lalaban ka?*" (What? Do you want to fight?) Espina told Bugayon to run away. Upon hearing this, Bugayon, very much afraid, retreated and did what his uncle told him.<sup>[5]</sup>

Bugayon asked for help from persons he met, but no one was willing to come to the aid of Espina. Finally, a passenger bus bound for Roxas passed by, and Bugayon boarded it. He alighted at the PNP station in Mansalay and reported the incident to the police.<sup>[6]</sup>

At 6:30 p.m. of the same day, Dr. Domingo Asis, Rural Health Physician of Mansalay, Oriental Mindoro, conducted an autopsy on the body of Winefred Espina. Dr. Asis' postmortem report (Exh. C), which revealed that the victim suffered fifteen (15) stab wounds, contained the following findings:

"(1) Wound, incised, 4.0 cm long, edges clean cut, 1.5 cm gape, 0.5 cm depth, middle forehead, showing the bone;

"(2) Wound, incised, 4.0 cm long, edges clean cut, 1.0 cm gape, 0.5 cm depth, forehead, right, above the eyebrow;

"(3) Wound, lacerated, triangular in shape, 1 cm. depth, above the eyebrow left;

"(4) Fracture, depressed, localized, frontal bone, base of the nose;

"(5) Wound, lacerated, 2 cm long, 1 cm depth, with fractured bone, lateral eyebrow, right;

"(6) Wound, lacerated, 1 cm. long, 0.5 cm depth, cheek, right;

"(7) Wound, stabbed, 1.5 cm long, 1.5 cm depth, posterior chest, at the level of the scapula;

"(8) Wound, incised, edges clean cut, 4.0 cm long, 5 cm depth, 1.5 cm gape, lateral distal third, forearm, left;

"(9) Wound, incised, edges clean cut, 2 cm long, 0.5 cm gape, 0.3 cm depth, radial area, wrist, left;

"(10) Wound, stabbed, 2.0 cm long, 8 cm depth, at the level of 6th ICS, left of the sternum, directing posteriorly, penetrating perforating the thoracic cavity;

"(11) Wound, stabbed, opening is D shape, 2 cm long, 8 cm depth, at the level of 4th ICS, midclavicular line, anterior chest, left directing laterally and posteriorly, penetrating perforating the cardiac cavity;

"(12) Wound, stabbed, 2 cm long, 1.5 cm depth, right of the sternum, at the level of 2nd ICS, non-penetrating;

"(13) Wound, lacerated, 4.0 cm long, 2.0 gape, 0.5 cm depth, distal third, dorsal, medial area, arm, right;

"(14) Wound, lacerated, 4.0 cm long, 2 cm gape, 0.5 depth, distal third, dorsal, lateral area, arm, right;

"(15) Wound, stabbed, 3 cm long, 1.5 cm gape, 8 cm depth, middle third, anterior, thigh, left directing upward and posteriorly."<sup>[7]</sup>

Of the fifteen wounds, the fatal ones were wounds no. 10 and 11. Dr. Asis testified that based on the location of the wounds, it was possible that the assailant or assailants were in front of or beside the victim. Dr. Asis stated that it was likewise possible that the wounds have been caused by only one instrument. He could not, however, state with certainty how many persons attacked the victim.<sup>[8]</sup> Dr. Asis issued a death certificate (Exh. D) on October 28, 1996, which stated that Winefred Espina died on October 21, 1996 from hemorrhagic shock caused by multiple wounds.

Accused-appellant's defense was alibi. He claimed that on October 21, 1996, at about 2:45 p.m., he was in their house located along the shore of Barangay Manaul, Mansalay. With him in the house were his two brothers, his mother, and his two nephews. At that time, accused-appellant was busy repairing a fishing device known as "*tora tora*," which was used by fishermen in catching bangus fries. Apart from the members of his family, Nemie Espiritu, a barriomate, saw accused-appellant at around 3:00 p.m. of that day. Accused-appellant claimed that he undertook the repair of the "*tora tora*" from 7:00 a.m. until 4:30 p.m. of that day. He insisted that he did not know his co-accused in this case, Randy and Lindo Gabay. He also denied that he knew the victim, Winefred Espina, or the latter's nephew, Arnold Bugayon.<sup>[9]</sup>

Accused-appellant further testified that their house at Barangay Manaul, Mansalay

was located along the shore about half a kilometer from the national highway. There were no motor vehicles which regularly plied the route from the highway to their place. He admitted, however, that the distance of their house to the highway could be covered in fifteen minutes by foot.<sup>[10]</sup>

Nemie Espiritu, a barriomate of accused-appellant, claimed that at around 3:00 p.m. of October 21, 1996, he was looking for fish to serve to his visitors. On his way to the house of a certain Tammy Seloria, he saw accused-appellant near his house and they nodded at each other.<sup>[11]</sup>

On the basis of the evidence presented by the parties, the trial court rendered a decision, the dispositive portion of which states:

"WHEREFORE, judgment is hereby rendered as follows:

"(a) The court finds accused Dindo Pajotal y Fetalcorin GUILTY, beyond reasonable doubt of the special complex crime of Robbery with Homicide punishable under Article 294 paragraph 1 of the Revised Penal Code as amended by RA 7659 with the aggravating circumstance of abuse of superior strength and he is hereby sentenced to suffer the supreme penalty of DEATH to be executed in accordance with existing law. In accordance with the provisions of Section 10, Rule 122 of the 1985 Rules of Criminal Procedure, the Branch Clerk of Court, Atty. Mariano S. Familara III is hereby directed to forward within twenty (20) days but not earlier than fifteen (15) days after promulgation of judgment or notice of denial of any motion for new trial or reconsideration the complete records of the case to the Honorable Supreme Court for review;

"(b) Accused Dindo Pajotal is also ordered to pay the heirs of the deceased Winefred Espina the sum of P50,000.00 as compensatory damages for the loss of life of the victim, the sum of P26,000.00 as actual damages and P500,000.00 as lost earnings;

"(c) With respect to accused Randy Gabay alias Randy Montesa and Lindo Gabay who are still at large, let an alias warrant of arrest be issued against them in order that they could be brought to court for trial."<sup>[12]</sup>

Hence this appeal.

Accused-appellant contends that:

"I. THE LOWER COURT ERRED IN CONVICTING ACCUSED-APPELLANTS OF THE CRIME CHARGED DESPITE THE FACT THAT THEIR GUILT WAS NOT PROVEN BEYOND REASONABLE DOUBT.

"II. GRANTING THAT THE ACCUSED-APPELLANT ARE (SIC) GUILTY, THE LOWER COURT ERRED IN CONVICTING THEM FOR ROBBERY WITH HOMICIDE SINCE THE CRIMES COMMITTED ARE ONLY THE TWO SEPARATE CRIMES OF SIMPLE ROBBERY AND HOMICIDE WHICH WILL ENTITLE THEM TO THE

IMPOSITION OF A LESSER PENALTY FOR EACH OF THE TWO  
FELONIES CORRESPONDINGLY."<sup>[13]</sup>

We find the appeal to be without merit.

**First.** Accused-appellant contends that the State failed to prove his guilt by strong and overwhelming evidence. While admitting that alibi per se is a weak defense, accused-appellant nevertheless contends that alibi can constitute a valid and plausible defense if, in the commission of the crime, there are no other witnesses except the parties involved. In this case, accused-appellant insists no other witness was presented to corroborate Arnold Bugayon's testimony.<sup>[14]</sup>

Accused-appellant's contention is untenable. Accused-appellant does not explain why the testimony of the lone eyewitness Arnold Bugayon is insufficient to establish his guilt beyond reasonable doubt. Nor does he give specific instances from the records of this case to bolster his claim of innocence.

Contrary to accused-appellant's claim, the prosecution has proved the guilt of accused-appellant beyond reasonable doubt. The fact that Arnold Bugayon was the only eyewitness does not diminish the force and weight of his testimony. A doctrine of long standing in this jurisdiction is that the testimony of a lone eyewitness, if credible and positive, is sufficient to convict an accused.<sup>[15]</sup> Hence the trial court, which heard Bugayon's testimony and had the opportunity to observe his demeanor while on the witness stand, said:

"The robbery subject of the instant case occurred in broad daylight. The lone eyewitness to the crime, Arnold Bugayon, categorically declared that it was accused Dindo Pajotal who clung to the right side of their passenger jeepney then being utilized as a delivery vehicle just next to him, to his right side and that while there was an on-going scuffle between his uncle and the two other- conspirators of Pajotal the latter even delivered with his knife a thrusting blow on him. To the mind of the court, Arnold Bugayon could not have failed to recognize Pajotal as he himself was assaulted by him. The natural reaction of a person in his predicament is to exert efforts to identify the culprits. As ruled by the Supreme Court in the cases of *People vs. Melendres*, 106 SCRA 575 and *People vs. Amiscua*, 37 SCRA 813, a truism founded on the ordinary course of things is that victims of criminal violence often strive hard to recognize and identify their assailants."<sup>[16]</sup>

We see no reason to disturb the trial court's evaluation and assessment of Bugayon's credibility, the same not being tainted by any arbitrariness or palpable error. The findings of the trial court judge who tried the case and heard the witnesses are not to be disturbed on appeal unless there are substantial facts and circumstances which have been overlooked and which, if properly considered, might affect the result of the case. The trial judge's evaluation of the witnesses' credibility deserves the utmost respect in the absence of arbitrariness. Conclusions and findings of the trial court are entitled to great weight on appeal and should not be disturbed unless for strong and valid reasons because the trial court is in a better position to examine the demeanor of the witnesses while testifying on the case.<sup>[17]</sup>

Arnold Bugayon's testimony is strengthened by the findings of Dr. Domingo Asis, the