

SECOND DIVISION

[G.R. No. 77865, December 04, 1998]

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. RAFAEL OLIVAREZ, JR., AND DANILO ARELLANO, APPELLANTS.

D E C I S I O N

MARTINEZ, J.:

Involved in this case is the crime of robbery with homicide committed during the season of yuletide. The facts as narrated in the People's brief are as follows:

"Prosecution witness Sgt. Eduardo Marcelo testified that he took the statements of appellant Rafael Olivares, Jr. and one Purisimo Macaoili and verbal investigation of appellant Danilo Arellano because the latter refused to give any statement.

"Prosecution witness Cpl. Tomas Juan of the Valenzuela Police Station V testified that in the morning of December 28, 1981, he was assigned by his station commander to follow-up the robbery with homicide that took place at Tanada Subdivision, Gen. T. De Leon, Valenzuela, Metro Manila. He learned from Patrolman Bote that a regular employee of the Cardinal Plastic Industries (where the crime was committed) had not yet reported for work. With that information, Cpl. Juan accompanied by Pat. Rodriguez, Acharon, and Reyes proceeded to the business establishment and were able to confirm from the workers that appellant Danilo Arellano failed to report for work since the commission of the crime. Melchor Salle (cousin of appellant Arellano) volunteered to bring them to Danilo Arellano, in a factory situated in San Juan, Metro Manila. Thereat, Melchor Salle was able to secure information from the 'barkada' of appellant Arellano who turned out to be appellant Olivares, Jr. Appellant Olivares accompanied them to Broadway, Barangay Kristong Hari, Quezon City, where they found appellant Arellano. After being asked about the incident that took place at the Cardinal Plastic Industries, appellant Arellano readily admitted to the police authorities his participation in the commission of the crime. Thereafter, appellant Arellano was invited to the police station (pp. 4-9, TSN, November 3, 1982). On further direct examination, Cpl. Juan identified in open court the Sanyo cassettes, the tapes and the wristwatch they recovered from the place where appellant Arellano pointed to them. Said items were turned over to the police station (pp. TSN, Nov. 17, 1982).

"Prosecution witness Purisimo Macaoili testified that he found the dead body of Mr. Sy (Tiu Hui) in the morning of December 26, 1981 inside the building where the business establishment is situated. Mr. Sy was residing alone inside his room because at that time his wife was in Hongkong. Some of the workers also reside inside the business

establishment. Mr. Macaoili also saw the dead body of the father of Mr. Sy (Zie Sing Piu) in the same building inside the establishment which was at that time registered as Foodman Company, a candy manufacturer (now Cardinal Plastic Industries). The bodies of the victims were about eight (8) to ten (10) arms-length apart. Thereafter, his companion Erning phoned Mr. Sy's brother who was then residing near Malacañang and informed him about the incident. Mr. Sy's brother arrived in the factory at around 6:30 o'clock in the morning and saw the bodies of the victims. The same brother asked for the assistance of the police who arrived at the scene of the crime and who conducted on-the-spot investigation. Later on and upon the direction of the police, the bodies of the victims were brought to the morgue. Mr. Macaoili did not notice any missing personal belongings of the victims at that time inside the building (pp. 4-13, TSN, Aug. 6, 1982). Further, Mr. Macaoili testified that he came to know that the wristwatch, the cassettes, and other personal items of the victims were missing when appellants were apprehended. He knew the cassette and the wristwatch because said items had been used by the victim, Tiu Heu. He knew appellant Arellano because he is his barriomate at Tuburan, Iloilo and was a laborer at Foodman Industries long before December 26, 1981. He also knew appellant Olivarez, Jr. as they are also barriomates and worked somewhere in Quezon City. He testified that appellant Olivarez, Jr. twice visited the factory before December 26, 1981 and saw him two or three weeks before said date. He also saw appellant Arellano inside the compound of Foodman Industries on December 25, 1981. Appellant Arellano resides inside the compound of the factory staying in the other room with other co-workers apart from the room of Mr. Macaoili and the members of his family. He stated that the wristwatch worn by victim Tiu Heu was mortgaged to the latter by the former's friend named Raul (pp. 5-11, TSN, August 20, 1982)

"Prosecution witness, Sgt. Eduardo Marcelo of the PNP, Valenzuela, Metro Manila testified that he conducted an investigation on the person of Rafael Olivarez, Jr. at about 10:45 o'clock in the morning of December 29, 1981. Sgt. Marcelo apprised him of his constitutional rights. When informed, appellant Olivarez, Jr. declined any assistance of a lawyer during the investigation considering that he will tell the truth about the incident. Mr. Melchor Salle and the chief of Sgt. Marcelo were present during the police investigations. Sgt. Marcelo prepared a statement (Exhibit B) signed by appellant Olivarez, Jr. relative to the investigation (pp. 4-11, TSN, October 8, 1982).

"Prosecution witness Sika Chong testified Tiu Hu is his brother and other victim Zie Sing Piu is his father. On December 26, 1981, the victims were residing inside the factory situated at Gen. T. de Leon, Valenzuela, Metro Manila. Sika Chong did not witness the commission of the crime. He personally knew the two (2) radio cassettes belong to his father as said items were his birthday gifts sometime in 1977 (Exhibit C) and in 1980 (Exhibit D). He bought the cassettes (Sanyo brand) from a store at Cartimar. The small cassette costs him P700.00 and the big radio at 800.00. Along with the said items, he also bought five (5) tapes (Exhibits E, E-1 to E-4) [pp. 5-14, TSN, March 4, 1983).

"Prosecution witness Ong Tian Lay testified that victim Zie Sing Piu is his father and victim Tiu Hu is his brother. The victims were at the time of their death engaged in sago and plastic business. When they ceased operation in the sago business, they engaged in plastic manufacturing until the time of their death. He spent more than P40,000.00 for the funeral expenses of the victims and although the total receipts from Funeraria Paz amounted only to P13,000.00, he also spent other expenses totalling P40,000.00 (pp. 3-8, TSN, April 22, 1983). On further direct examination, Ong Tian Lay testified that he saw the publication about the death of his father and brother at the police department of Valenzuela, Metro Manila. He was able to get a clipping of the publication (Exhibit F). He could not remember the names of the newspaper where the victim's death were published but could remember that the incident was published in at least three (3) newspapers, one (1) in the Chinese language and two (2) in the English language (pp. 4-13, TSN, June 29, 1983).

"Prosecution witness Narciso Gador, factory worker of Cardinal Plastics, testified that the factory is owned by Ka Tiong Sy. He knew that the father of his employer is already dead as well his brother. He knew appellant Danilo Arellano because the latter is a former laborer of Cardinal Plastic. He only came to know the person of appellant Olivarez, Jr. after the incident. He saw appellants between the hours of 9:00 o'clock and 10:00 o'clock in the evening of December 25, 1981 inside the Delia's restaurant located at BBB, Valenzuela, Metro Manila. Narciso Gador and his companions arrived, they ordered beer while seated at another table. They left the restaurant between the hours of 9:00 o'clock and 10 o'clock in the evening of December 25, 1981 ahead of appellants. (pp. 3-6, TSN, June 15, 1983)

"Dr. Rodolfo Lizondra conducted the autopsy of the cadaver of the victims. He prepared a Necropsy Report on victim Tiu Heo Hu (Exhibits G, G-1, G-2) and similar report on victim Sy Sing Kiaw (Exhibits H, H-1 to H-3) [Decision, Jan. 30, 1987].^{[1]*}

For the death of the two victims and the loss of some items, appellants were charge with the complex crime of "robbery with double homicide" under the following information:

"That on or about the 26th day of December 1981, in the municipality of Valenzuela, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, the said accused Rafael Olivarez, Jr. y Jaba and Danilo Arellano y Montinol, conspiring and confederating together and mutually helping each other, did then and there wilfully, unlawfully and feloniously, with intent of gain and by means of force, violence and intimidation upon the persons of Tiu Hu and Zie Sing Piu alias 'Sy Sing Kiaw' take, rob and carry away with them cash in the amount of P1,800.00 two (2) radio cassettes marked 'Sanyo', one (1) wrist watch marked 'Citron' and five (5) tape recorder cassettes, belonging to Tiu Hu to the damage and prejudice of the latter in the sum of more than P1,800.00; and that by reason or on the occasion (sic) of the said robbery and for the purpose of enabling them to take, rob and carry away the said amount of P1,800.00,

two (2) radio cassettes, one (1) wrist watch and five (5) tape recorder cassettes the herein accused, in pursuance of their conspiracy, did then and there willfully, unlawfully and feloniously, with evidence (sic) premeditation and treachery and taking advantage of their superior strength, attack, assault and use personal violence on the said Tiu Hu and Zie Sing Piu alias 'Sy Sing Kiaw', thereby inflicting fatal physical injuries which directly caused the death of the said Tiu Hu and Zie Sing Piu alias 'Sy Sing Kiaw.'

"That in the commission of the said crime, other aggravating circumstances of nocturnity and unlawful entry were present."^[2]

After trial, the lower court rendered a decision dated January 30, 1987 convicting appellants of the crime charged, sentenced them to suffer the death penalty and to indemnify the victims' heirs. The dispositive portion of the trial court's decision reads:

"In view of the foregoing circumstantial evidence and not mainly on the basis of the extrajudicial confession, the Court finds both accused guilty beyond reasonable doubt of the crime of Robbery with Double Homicide and sentences them to suffer the penalty imposed by law which is death on 2 counts, and to indemnify the heirs of the victim in the sum of P60,000.00 and to pay the costs.

"SO ORDERED."^[3]

On direct appeal to this Court, appellants, who are imprisoned, seek their acquittal on the ground that their guilt was not proven by the prosecution beyond reasonable doubt. Alternatively, they argued that in case their conviction is sustained, the death penalty should not be imposed on them in the light of the 1987 Constitution.

In the course of the elevation of the records, the Court found that the transcript of stenographic notes (TSN) for the November 12, 1982^[4] hearing was missing. When the whereabouts of the said TSN could not be traced despite the diligent efforts and after disciplinary measures were imposed on some court personnel, the counsels of both parties were ordered to submit their respective manifestation if said TSN may be dispensed with or a retaking of the testimony of the witness should instead be made.^[5] The Office of the Solicitor General (OSG) agreed to dispense with the TSN.^[6] Counsel for appellants (Atty. Escolastico R. Viola), who failed to comply with the order, was penalized with fine and later ordered arrested by this Court.^[7] Thereafter, the Court appointed the Public Attorney's Office (PAO) to represent appellants.^[8] The PAO made a similar manifestation as the OSG did with respect to the TSN.^[9]

Upon a thorough review of the records of the case, appellants' conviction cannot stand for reasons which were not discussed or even mentioned by appellants' appointed counsel. The PAO, as the duly designated government agency to represent and render legal services to pauper litigants who cannot hire their own counsel, should have exerted more effort on this case. Its pleadings filed before this court could hardly be considered as the product of an advocate who has the responsibility to serve his client with competence and diligence.^[10] The preparation

of his case is a duty the lawyer owes not only to his client whose property, money and above all life and liberty he is bound to protect. It is also a duty he owes to himself, to his own integrity and self-respect at the bar. Nonetheless, the Court is not powerless to address and consider unassigned issues and relevant facts and law that may affect the merits and justifiable disposition of the case.

Initially, the categorization by the prosecution of the crime of robbery with double homicide is erroneous because the word "homicide" in Article 294 of the Revised Penal Code (RPC) should be taken in its generic sense,^[11] absorbing not only acts which results in death (such as murder) but also all other acts producing anything short of death (such as physical injuries committed during the robbery,^[12] and regardless of the multiplicity of the victims which is only considered as an aggravating circumstance.^[13] The indictable offense is still the complex crime of robbery with homicide (which is its proper nomenclature), the essential elements of which are:

- a.) the taking of personal property with the use of violence or intimidation against a person;
- b.) the property thus taken belongs to another;
- c.) the taking is characterized by intent to gain or animus lucrandi;
- d.) on the occasion of the robbery or by reason thereof, the crime of homicide which is therein used in a generic sense, was committed.^[14]

In this case, there were no eyewitnesses to the killing and robbery and; thus, no direct evidence points to appellant's criminal liability. The prosecution's principal evidence against them is based solely on the testimony of the police officers who arrested, investigated and subsequently took their confession. Such evidence when juxtaposed with appellants' constitutional rights concerning arrests and the taking of confessions leads to a conclusion that they cannot be held liable for the offense charged despite the inherent weakness of their defenses of denial and alibi, not because they are not guilty but because the evidence adduced against them are inadmissible to sustain a criminal conviction.

First, appellants were arrested without a valid a valid warrant of arrest and their arrest cannot even be justified under any of the recognized exceptions for a valid warrantless arrest mentioned in Section 6, (now Section 5) Rule 113 of the Rules on Criminal Procedure, which prior to its amendment in 1988^[15] provides:

"Arrest without warrant; when lawful. - A peace officer or private person may, without a warrant, arrest a person:

- (a) when the person to be arrested has committed, is actually committing, or is about to commit an offense in his presence;
- (b) when the offense has in fact been committed, and he has reasonable ground to believe that the person to be arrested has committed it;
- (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