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THIRD DIVISION

[G.R. No. 109775, November 14, 1996]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JOSE ENCARNACION MALIMIT ALIAS "MANOLO", ACCUSED-APPELLANT.

D E C I S I O N

FRANCISCO, J.:

Appellant Jose Encarnacion Malimit, charged with[1] and convicted of the special complex crime of robbery with homicide,[2] was meted by the trial court[3] the penalty of *reclusion perpetua.* He was also ordered to indemnify the heirs of Onofre Malaki the sum of Fifty Thousand Pesos (P50,000.00) without subsidiary imprisonment in case of insolvency, and to pay the cost.[4]

In this appeal, appellant asks for his acquittal alleging that the trial court committed the following errors, to wit:

"I

THE TRIAL COURT ERRED IN GIVING CREDENCE TO THE UNRELIABLE TESTIMONIES OF THE PROSECUTION WITNESSES ON THEIR ALLEGED IDENTIFICATION OF THE ACCUSED-APPELLANT AS THE PERPETRATOR OF THE CRIME DESPITE THE FACT (SIC) THEY REVEALED THEIR ALLEGED 'KNOWLEDGE' OF THE CRIME MORE THAN FIVE MONTHS AFTER THE INCIDENT.

II

THE TRIAL COURT ERRED IN ADMITTING AS EVIDENCE THE WALLET AND ITS CONTENTS ALTHOUGH THE CIRCUMSTANCES WHICH LEAD TO ITS PRODUCTION WAS OBTAINED IN VIOLATION OF THE CONSTITUTIONAL RIGHTS OF THE ACCUSED.

III

THE TRIAL COURT ERRED IN CONVICTING THE ACCUSED-APPELLANT DESPITE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT."[5]

The following is the recital of facts as summarized by the appellee in its Brief, and duly supported by the evidence on record:

"On April 15, 1991, around 8:00 o'clock in the evening, [Onofre] Malaki was attending to his store. Malaki's houseboy Edilberto Batin, on the

other hand, was busy cooking chicken for supper at the kitchen located at the back of the store (TSN, June 19, 199 (sic), p. 14).

"Soon thereafter, Florencio Rondon, a farmer, arrived at the store of Malaki. Rondon was to purchase chemical for his rice farm (TSN, May 22, 1992, p. 19). Rondon came from his house, approximately one hundred and fifty (150) meters distant from Malaki's store (Ibid., p. 24).

"Meanwhile, Batin had just finished cooking and from the kitchen, he proceeded directly to the store to ask his employer (Malaki) if supper is to be prepared. As Batin stepped inside the store, he was taken aback when he saw appellant coming out of the store with a bolo (TSN, June 9, 1992, p. 14), while his boss, bathed in his own blood, was sprawled on the floor 'struggling for his life' (hovering between life and death) (Ibid.).

"Rondon, who was outside and barely five (5) meters away from the store, also saw appellant Jose Malimit (or 'Manolo') rushing out through the front door of Malaki's store with a blood-stained bolo (TSN, May 22, 1992, p. 29). Aided by the illumination coming from a pressure lamp ('petromax') inside the store, Rondon clearly recognized Malimit (Ibid., p. 22).

"Batin immediately went out of the store to seek help. Outside the store, he met Rondon (TSN, June 9, 1992, p. 15). After a brief conversation, both Batin and Rondon rushed to the nearby house of Malaki's brother-in-law Eutiquio Beloy and informed Beloy of the tragic incident which befell Malaki. Batin, along with Beloy, went back to the store. Inside, they saw the lifeless body of Malaki in a pool of blood lying prostrate at the floor. Beloy readily noticed that the store's drawer was opened and ransacked and the wallet of Malaki was missing from his pocket (Ibid., pp. 16-17)." [6]

In his first assignment of error, appellant questions the credibility of prosecution witnesses Florencio Rondon and Edilberto Batin by pointing out their alleged delay in revealing what they knew about the incident. He posits that while the crime took place on April 15, 1991, it was only on September 17, 1991 when these witnesses tagged him as the culprit.

We find these contentions bereft of merit. Appellant haphazardly concluded that Rondon and Batin implicated the appellant to this gruesome crime only on September 17, 1991. The aforementioned date however, was merely the date[7]when Rondon and Batin executed their respective affidavits,[8] narrating that they saw the appellant on the night of April 15, 1991 carrying a bolo stained with blood and rushing out of Malaki's store. As to appellant's claim of delay, suffice it to state that extant from the records are ample testimonial evidence negating appellant's protestation, to wit: (1) after having discovered the commission of the crime, Rondon and Batin immediately looked for Eutiquio Beloy, Malaki's brother-in-law, and informed him that appellant was the only person they saw running away from the crime scene;[9] (2) Beloy and Batin reported the crime with the CAFGU detachment in their barangay where Batin declared that it was appellant who robbed Malaki on that fateful night;[10] and (3) Batin again made a similar statement later

at the Silago Police Station.[11]

Next, appellant derided the non-presentation by the prosecution of the police blotter which could prove if appellant was indeed implicated right away by Batin to the crime.[12] We do not believe, however, that it was necessary for the prosecution to present as evidence a copy of the aforementioned police blotter. Neither was its non-presentation in court fatal to the prosecution's case. Entries in the police blotter are merely corroborative evidence of the uncontroverted testimony of Batin that he identified the appellant as the perpetrator of the crime before the Silago police. As such, its presentation as evidence is not indispensable.[13] Besides, if appellant believed that he was not identified therein, then he should have secured a copy thereof from the Silago Police Station and utilized the same as controverting evidence to impeach Batin's credibility as witness.[14] Having failed to do so, appellant cannot now pass the blame on the prosecution for something which appellant himself should have done.

Even assuming arguendo that Rondon and Batin identified the appellant only on September 15, 1991, or after the lapse of five months from commission of the crime, this fact alone does not render their testimony less credible. The non-disclosure by the witness to the police officers of appellant's identity immediately after the occurrence of the crime is not entirely against human experience.[15] In fact the natural reticence of most people to get involved in criminal prosecutions against immediate neighbors, as in this case,[16] is of judicial notice.[17] At any rate, the consistent teaching of our jurisprudence is that the findings of the trial court with regard to the credibility of witnesses are given weight and the highest degree of respect by the appellate court.[18] This is the established rule of evidence, as the matter of assigning values to the testimony of witnesses is a function best performed by the trial court which can weigh said testimony in the light of the witness' demeanor, conduct and attitude at the trial.[19] And although the rule admits of certain exceptions, namely: (1) when patent inconsistencies in the statements of witnesses are ignored by the trial court, or (2) when the conclusions arrived at are clearly unsupported by the evidence,[20] we found none in this case.

In his second assignment of error, appellant asseverates that the admission as evidence of Malaki's wallet[21] together with its contents, viz., (1) Malaki's residence certificate;[22] (2) his identification card;[23] and (3) bunch of keys,[24] violates his right against self-incrimination.[25] Likewise, appellant sought for their exclusion because during the custodial investigation, wherein he pointed to the investigating policemen the place where he hid Malaki's wallet, he was not informed of his constitutional rights.

We are not persuaded. The right against self-incrimination guaranteed under our fundamental law finds no application in this case. This right, as put by *Mr. Justice Holmes in Holt vs. United States,*[26] "x x x is a prohibition of the use of physical or moral compulsion, to extort communications from him x x x." *It is simply a prohibition against legal process to extract from the [accused]'s own lips, against his will, admission of his guilt.*[27] It does not apply to the instant case where the evidence sought to be excluded is not an incriminating statement but an object evidence. Wigmore, discussing the question now before us in his treatise on

evidence, thus, said:

"If, in other words (the rule) created inviolability not only for his [physical control of his] own vocal utterances, but also for his physical control in whatever form exercise, then, it would be possible for a guilty person to shut himself up in his house, with all the tools and indicia of his crime, and defy the authority of the law to employ in evidence anything that might be obtained by forcibly overthrowing his possession and compelling the surrender of the evidential articles - a clear *reduction ad absurdum. In other words, it is not merely compulsion* that is the kernel of the privilege, *** but *testimonial compulsion.*"[28]

Neither are we prepared to order the exclusion of the questioned pieces of evidence pursuant to the provision of the Constitution under Article III, Section 12, viz:

> "(1) Any person under investigation for the commission of an offense shall have the right to be informed of his right to remain silent and to have competent and independent counsel preferably of his own choice. If the person cannot afford the services of counsel, he must be provided with one. These rights cannot be waived except in writing and in the presence of counsel.
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> x x x x x x x x x.
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> "(3) Any confession or admission obtained in violation of this or Sec. 17 hereof, shall be inadmissible in evidence against him.(Underscoring ours.)
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> x x x x x x x x x"

These are the so-called "Miranda rights" so oftenly disregarded by our men in uniform. However, infractions thereof render inadmissible only the extrajudicial *confession or admission* made during custodial investigation. The admissibility of other evidence, provided they are relevant to the issue and is not otherwise excluded by law or rules,[29] is not affected even if obtained or taken in the course of custodial investigation. Concededly, appellant was not informed of his right to remain silent and to have his own counsel by the investigating policemen during the custodial investigation. Neither did he execute a written waiver of these rights in accordance with the constitutional prescriptions. Nevertheless, these constitutional short-cuts do not affect the admissibility of Malaki's wallet, identification card, residence certificate and keys for the purpose of establishing other facts relevant to the crime. Thus, the wallet is admissible to establish the fact that it was the very wallet taken from Malaki on the night of the robbery. The identification card, residence certificate and keys found inside the wallet, on the other hand, are admissible to prove that the wallet really belongs to Malaki. Furthermore, even assuming arguendo that these pieces of evidence are inadmissible, the same will not detract from appellant's culpability considering the existence of other evidence and circumstances establishing appellant's identity and guilt as perpetrator of the crime charged.

We, now come to appellant's third assignment of error where he demurs on the prosecution's evidence, contending that they are insufficient to sustain his conviction.