

EN BANC

[G.R. No. 123161, June 18, 2003]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
LIBERATO "DUKDUK" SOLAMILLO AND JULIAN SOLAMILLO,
ACCUSED-APPELLANTS.**

D E C I S I O N

SANDOVAL-GUTIERREZ, J.:

For automatic review is the Decision^[1] dated September 20, 1995 of the Regional Trial Court, Branch 1, Isabela, Basilan, in Criminal Case No. 2099 declaring Liberato "Dukduk" Solamillo and Julian Solamillo guilty beyond reasonable doubt of the complex crime of robbery with homicide and sentencing them to suffer the penalty of death. They were also adjudged to pay Aleli P. Guiroy, the daughter of the victim, Alexander Guiroy, P500,000.00 as moral damages, P200,000.00 as exemplary damages, P20,000.00 as attorney's fee and P500.00 as costs.

On March 23, 1994, an Information^[2] was filed with the said trial court charging brothers Liberato "Dukduk" and Julian Solamillo, **appellants**, together with Edgardo Ebarle and Eddie "Angel" Trumata, with the crime of robbery with homicide, committed as follows:

"That on or about the 2nd day of March, 1994, and within the jurisdiction of this Honorable Court, viz., at Aguada Barangay, Municipality of Isabela, Province of Basilan, Philippines, the above-named accused, armed with a *bolo*, *bakawan* wood and wooden stool, conspiring and confederating together, aiding and assisting one with the other, with treachery and evident premeditation and with intent to kill and by means of force and violence upon person, did then and there willfully, unlawfully, and feloniously assault, club and hack at the person of Alexander Guiroy, proprietor of Liberty Bakery and Grocery, thereby inflicting hack wounds and bodily injuries on the different parts of the body of the latter, which caused his instantaneous death. That taking advantage that the victim, Alexander Guiroy, was already dead, and with intent to gain, the said accused forcibly took, stole and carted away the following described property belonging to the said Alexander Guiroy; viz., cash money equivalent to four-day income amounting to more or less P20,000.00, wristwatch "Seiko Diver" worth P3,000.00 and a wallet colored black, to the damages and prejudice of the legal heirs of the deceased Alexander Guiroy in the total amount of P23,000.00, Philippine Currency.

"Contrary to law."

Upon arraignment with the assistance of counsel, appellant Liberato "Dukduk" Solamillo and Edgardo Ebarle pleaded not guilty, while appellant Julian Solamillo

entered a plea of guilty.^[3] Eddie Trumata was not arraigned as he has been at large.

The prosecution filed a motion praying that Edgardo Ebarle be discharged as an accused to be utilized as a state witness. However, he died before he could testify.^[4]

During the trial, the prosecution presented the following witnesses: Aleli P. Guiroy, Dr. Teresita L. Dans, Emmanuel Guiroy, SPO4 Pedro Oreta, and PO3 Celso Tan Sanchez. Their testimonies are summarized below.

The victim owned the Liberty Bakery and Grocery located at Rizal Avenue, Isabela, Basilan. His employees were appellant Julian Solamillo, Edgardo Ebarle and Eddie Trumata, who lived together in the bakery.^[5]

On March 2, 1994, Edgardo Ebarle, Eddie Trumata and appellants were at the bakery. Aleli Guiroy, the victim's daughter, saw them when she arrived at around 5:00 p.m. until she left at 6:10 p.m.^[6]

The next morning, Aleli returned to the bakery but was unable to open the doors. She sought help from her uncle, Lorenzo Guiroy who, in turn, asked Warlito Gonoz to accompany her back to the bakery. When Warlito peeped through a window, he saw the victim lying on the floor. Immediately, they reported the matter to the police.^[7]

PO3 Celso Tan Sanchez arrived and found the victim's dead body, a wooden stool, a bolo and a piece of *bakawan* (firewood), all with blood. The table drawers were open and the bakery was in disarray.^[8] Aleli informed PO3 Sanchez that her father's P20,000.00, wallet and Seiko watch were missing.^[9]

Dr. Teresita Dans examined the victim's body. She confirmed her Post-Mortem Report^[10] that the victim suffered 21 incised wounds, multiple contusion-hematoma and multiple abrasions which caused his death. According to her, the incised wounds were probably caused by a knife or bolo, while the multiple hematoma, contusions, and abrasions were caused by a blunt instrument, like a piece of wood or pipe.^[11]

Aleli testified that she spent more than P20,000.00 for the funeral of her father.^[12]

On March 4, 1994, or two days after the incident, the police of Lamitan, the neighboring town of Basilan, informed Emmanuel Guiroy, the victim's brother, that they have apprehended Edgardo Ebarle. Forthwith, Emmanuel and SPO4 Pedro Oreta went to Lamitan. There the police turned over Edgardo to SPO4 Oreta. While on their way back to Isabela, Edgardo told Emmanuel that Eddie Trumata and appellants assaulted the victim, pulled him to the table and hit his head.^[13]

On March 6, 1994, or four days after the incident, SPO4 Oreta arrested appellant Liberato Solamillo in Zamboanga City. While he was being investigated at the police station, SPO4 Oreta noticed that he was wearing a watch. Emmanuel confirmed that it belonged to the victim. SPO4 Oreta then asked appellant to open his traveling bag and found therein the victim's missing wallet and money amounting to P48.00.^[14]

Upon the other hand, appellants, and their brother Melanio Solamillo have a different story to tell.

On March 2, 1994, the day of the incident, at around 4:00 p.m., Liberato visited his brother Julian at the victim's bakery. After about one hour, Liberato went to Melanio's house.^[15] Meanwhile, at past 6:30 p.m., Julian started preparing the flour needed for baking, while Edgardo Ebarle and Eddie Trumata cooked their supper. But before they could eat, the victim scolded Edgardo and Eddie for creating a mess in the bakery. He continued scolding the two as he sat down to feed his cat. Suddenly, Julian saw Eddie hitting the victim's head with a piece of *bakawan* causing the latter to fall. He managed to get up and exchanged blows with Eddie. At this point, Edgardo got a bolo and attacked the victim. Julian could not intervene because Eddie threatened to kill him if he would do so.^[16]

After beating the victim, Eddie and Edgardo ransacked the drawers and took the money. They then asked Julian to leave. But before he could do so, he managed to take P995.00 from the money scattered on the floor. Eddie and Edgardo headed off to Lamitan, Basilan,^[17] while Julian passed by Zamboanga City on his way to Dumaguete City where he intended to surrender. While in Zamboanga City, he met his brother Liberato, who was then looking for him. Thereafter, Julian proceeded to Dumaguete City. Liberato was supposed to head back to Isabela but was forced to spend the night in Zamboanga City because he missed the boat.^[18]

The next day, March 6, Melanio accompanied Emmanuel Guiroy and SPO4 Oreta to Zamboanga to look for both appellants. On the same day, Liberato was arrested.^[19] While he was being interrogated at the Tetuan, Zamboanga Police Sub-Station, SPO4 Oreta showed him a wallet, a watch and some money, stating that these are evidence against him. Liberato immediately denied having knowledge about the said items. Then, he was turned over to the Isabela police.^[20]

Meanwhile, Julian surrendered to the police in Bacong, Dumaguete where he was detained until he was turned over to the Isabela police.^[21] He pleaded guilty during the arraignment because a policeman named Bayabos threatened to kill him.^[22]

On September 20, 1995, the trial court rendered a Decision,^[23] the dispositive portion of which, reads:

"WHEREFORE, premises considered, this Court finds the accused, Liberato "Dukduk" Solamillo and Julian Solamillo GUILTY as principals beyond the shadow of any doubt of committing the crime of Robbery with Homicide as charged in the Information, which crime is defined and penalized under Art. 248 (should be Art. 294) of the Revised Penal Code, as amended by Sec. 6 (should be Sec. 9) of Republic Act No. 7659, the commission of which was attended by the following circumstances, to wit:

1. Committed by a band, there were four (4) persons who committed the offense. (par. 6, Art. 14, Revised Penal Code);
2. Committed with evident premeditation. (par. 13, Art. 14,

supra);

3. Committed by treachery. (par. 16, Art. 14, supra); and
4. Committed with deliberate cruelty, considering that the victim suffered twenty-one (21) hack and stab-wounds and contusion and abrasions on different parts of his body.

"Without any mitigating circumstances to offset any of them, (this court) hereby sentences both and each of them to suffer the extreme penalty of DEATH and to pay the following damages to Miss Aleli Guiroy who in her youthful years has lost her father, upon whom her future security depends, to wit:

1. P500,000.00 as moral damages;
2. P200,000.00 as exemplary damages;
3. P20,000.00 as attorney's fee; and
4. P500.00 as judicial costs.

"x x x

"IT IS SO ORDERED."

Appellants Liberato and Julian Solamillo, in their brief, contend that the trial court erred in finding them guilty of the crime of robbery with homicide and in imposing upon them the death penalty.^[24]

We disagree.

The trial court correctly convicted the appellants on the basis of the chain of circumstantial evidence established by the prosecution, thus:

1. Edgardo Ebarle, Eddie Trumata, and appellant Julian Solamillo worked and lived in the bakery owned by the victim. The other appellant, Liberato Solamillo, was also at the bakery in the afternoon of March 2, 1994. The following day, the victim was found dead;
2. After the commission of the crime, all four accused fled: Edgardo and Eddie to Lamitan, Basilan; Julian to Dumaguete City; and Liberato to Zamboanga City;
3. When Liberato was arrested in Zamboanga City, the victim's wristwatch and wallet were found in his possession; and
4. Julian admitted that immediately after the victim was killed, he picked up P995.00 scattered on the bakery floor after Eddie and Edgardo ransacked the drawers containing money.^[25]

Circumstantial evidence is sufficient basis for conviction as long as: (a) there is more than one circumstance; (b) the facts from which the inferences are derived are proven; and (c) the combination of all the circumstances is such as to produce a conviction beyond reasonable doubt.^[26] Thus, facts and circumstances consistent with guilt and inconsistent with innocence, constitute evidence which, in weight and probative force, may surpass even direct evidence in its effect upon the court.^[27] These facts and circumstances are present here and constitute sufficient evidence which warrants the conviction of both appellants.

Liberato denied having the victim's personal effects in his possession, insisting that he saw these items for the first time when he was being interrogated.^[28]

Section 3, Rule 131 of the Revised Rules on Evidence provides:

"Sec. 3. *Disputable presumptions*. — The following presumptions are satisfactory if uncontradicted, but may be contradicted and overcome by other evidence:

"x x x

(j) That a person found in possession of a thing taken in the doing of a recent wrongful act is the taker and the doer of the whole act; x x x"

We find that Liberato failed to overcome this presumption. He could not provide a satisfactory explanation why the victim's belongings were in his possession. Moreover, he could not show any ill motive on the part of SPO4 Oreta that would impel the latter to fabricate evidence against him. SPO4 Oreta enjoys the presumption that he has regularly performed his official duty.^[29] Liberato likewise failed to overthrow this presumption.

We find untenable Liberato's explanation that he went to Zamboanga City after the commission of the crime to look for his brother Julian. True, flight *per se* cannot prove the guilt of an accused, but if the same is considered in the light of other circumstances, it may be deemed as a strong indication of guilt.^[30] His flight to Zamboanga City when linked with his presence at the bakery, the crime scene, and his possession of the victim's effects upon his arrest, strongly indicate his participation in the commission of the crime. Thus, the trial court correctly held that the circumstances taken together point to the fair and logical conclusion that appellant Liberato Solamillo is guilty of the crime of robbery with homicide.

For his part, appellant Julian Solamillo maintains that the trial court erred in disregarding his tacit withdrawal of his guilty plea. He claims that policeman Bayabos threatened to kill him if he will plead not guilty.

Section 5, Rule 116 of the Revised Rules of Criminal Procedure, as amended, provides that "(a)t any time before the judgment of conviction becomes final, the court may permit an improvident plea of guilty to be withdrawn and be substituted by a plea of not guilty." The tenor of the quoted provision is clear. There should be a categorical declaration from the accused that he is withdrawing his plea of guilty and substituting it with a plea of not guilty.