

SECOND DIVISION

[G.R. No. 128720, January 23, 2002]

S/SGT. ELMER T. VERGARA, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

DECISION

QUISUMBING, J.:

Petitioner seeks the reversal of the Court of Appeals' decision dated October 31, 1996, in CA-G.R. No. CR 18318, which affirmed the judgment of the Regional Trial Court of Pasig City, Branch 167, in Criminal Case No. 86163, convicting him of robbery, thus:

WHEREFORE, judgment is hereby rendered finding the accused S/Sgt. Elmer Vergara GUILTY beyond peradventure of doubt of the crime of Robbery defined and penalized under Art. 294, No. (5), in relation to Art. 295, of the Revised Penal Code and is hereby sentenced to an indeterminate penalty of Four (4) years of prision correccional, as minimum, to Eight (8) years and Twenty-One (21) days of prision mayor, as maximum; to indemnify the offended party in the sum of P106,000.00; to suffer all the accessory penalties appurtenant thereto; and, to pay the Costs.

SO ORDERED.^[1]

The facts of the case are as follows:

On March 19, 1991, an information charging S/Sgt. Elmer Vergara, PC, C1C Nicasio Custodio y Abrera, PC and Leonido Losanes y Vasquez of robbery in band was filed by the Rizal Provincial Prosecutor's Office with the RTC of Pasig, Metro Manila. The information reads:

That on or about the 19th day of October, 1990, in the Municipality of Mandaluyong, Metro Manila, Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together with John Doe, whose true identity and present whereabouts is still unknown, and mutually helping and aiding one another, armed with high powered handguns, with intent of gain, by means of violence and intimidation employed upon the person of one Catherine F. Manalo, an employee of J & E Manalo Construction Co., Inc., who was then aboard a private car, did then and there wilfully, unlawfully and feloniously take, steal and divest from Catherine F. Manalo the payroll money amounting to P89,000.00 belonging to J & E Manalo Construction Company, Inc. and a gold necklace with two (2) pendants, 18K valued at P17,000 belonging to Catherine F. Manalo, to the damage and prejudice of J & E Manalo Construction Company, Inc. and Catherine

F. Manalo in the aforementioned amounts of P89,000.00 and P17, 000.00 respectively.

Contrary to law.^[2]

Although all the suspects were brought into police custody, petitioner's co-accused managed to extricate themselves from police control and remain at large. Only petitioner was left to face the charges. On May 21, 1993, he was arraigned. With the assistance of counsel *de officio*, he pleaded "not guilty" to the charges. Following the pre-trial conference on August 20, 1993, trial on the merits ensued.

The prosecution relied on the positive identification made by private complainant who testified in court. As found by the court *a quo*:

x x x

On October 27, 1990, during the police line-up at the San Juan Police Station...she positively identified herein accused Elmer Vergara as the armed man who pointed the gun at her after he approached the left side of the car and wearing an army fatigue uniform with black hat and who got her car keys, thereafter, she executed another statement implicating accused Elmer Vergara as one of the four armed men who robbe[d] her.

On March 16, 1994, during the hearing of the case, she (Catherine F. Manalo) again pointed to accused Elmer Vergara to be one of the robbery/hold-up gang members (HULIDAP), who took the payroll money of the J & E Manalo Construction Co., Inc., and her gold necklace, his participation being that of the person who pointed the gun at her and got the keys to her car; she remembered him to be about 5'6" to 5'7" in height, with dark features, chubby and heavily built.^[3]

Petitioner claimed an alibi, while denying any participation in the offense. The trial court summed up his defense as follows:

Accused Elmer Vergara lays a serious doubt on his identity as one of the perpetrators of the robbery 'hold-up' in question...Claiming innocence, he presented evidence showing that he was at some other place during the occurrence of the robbery. His alleged presence at the Pacita Complex at San Pedro, Laguna, being a member of the narcotic operatives engaged in a surveillance of a suspected drug pusher, was corroborated by no less than the team leader Captain, now Major Christopher Laxa. Major Christopher Laxa was definite in declaring that S/Sgt. Elmer Vergara was physically present inside the Pizza Hut restaurant at Pacita Complex, San Pedro Laguna, at about 3:00 o'clock in the afternoon of October 19, 1990 and, that he did not leave the area from the time of their arrival at around 1:00 o'clock in the morning until 11:30 o'clock in the evening....

^[4]

The trial court chose to believe the prosecution and disregarded petitioner's alibi. On March 29, 1995, it convicted Vergara not of robbery in band as charged in the information, however, but of robbery as defined and penalized under Article 294 of the Revised Penal Code. As explained by the trial court:

Under Art. 295 of the Revised Penal Code a robbery shall be deemed to have been committed by a band when more than three armed malefactors (underline supplied) take part in its commission. The prosecution's evidence demonstrates that only three (3) in the group were armed, although there was another member inside the car at the time of the commission. However, there is no indication that the person inside the car was armed. Conceding in gratia argumenti, therefore, that the group of the accused Elmer Vergara was composed of more than three (3) malefactors, the evidence disclosed that only three (3) were armed, and hence, the crime cannot be considered to have been committed by a band and does not come within the purview of Article 296 of the Revised Penal Code, which requires more than three (3) armed malefactors to constitute the crime of robbery committed by a band.^[5]

In convicting petitioner for robbery, the trial court stated:

Both the defenses of negative identification and alibi are unavailing. Contrary to these protestations, complainant Catherine Manalo had a vivid recollection of the identity of S/Sgt. Elmer Vergara as the person who accosted her on the left side of the car or at the driver's seat and who poked a gun at her neck and was also the one who took the key from the ignition. It was a clear day, 3:00 o'clock in the afternoon, and the probability of a poor recollection is nil. Catherine Manalo was able to see Sgt. Elmer Vergara while on board the Gallant (sic) Sigma Car when it was trailing her car and also at the time it was passing her car until her path was blocked and the three (3) armed malefactors disembarked. She had sufficient time to recollect the faces of the persons who approached the car and their respective positions. There is no reason to doubt her unerring testimony that she was able to positively remember and then later on identified the robbers. Between the positive declaration of Catherine Manalo and the denial of accused Elmer Vergara, the former deserves more credence, notwithstanding minor inaccuracies as to the height and weight and styling of the hair of accused Elmer Vergara.

x x x

Conceding the fact that accused Elmer Vergara was in San Pedro, Laguna, it is not physically impossible for him to have gone to Pasig, Metro Manila, considering that he had an available means of transportation. The distance between San Pedro, Laguna where the accused claimed he was at the time the robbery took place, and Pasig, Metro Manila, where the crime was committed, is less than an hour drive by car and can easily be reached by one who, like the accused Elmer Vergara, had a car available to him.^[6]

Aggrieved by his conviction, Vergara elevated the case to the Court of Appeals, docketed as CA-G.R. CR No. 18318, on the sole issue of whether or not petitioner committed the crime charged against him. The appeal was anchored on two grounds: (1) the alleged dubious identification of Vergara by the private complainant, and (2) failure of the trial court to appreciate Vergara's alibi that he

was on an intelligence mission in San Pedro, Laguna at the time the alleged robbery, specially in view of the corroboration of his alibi by his commanding officer.

Finding no reversible error in the findings and conclusions of the trial court, the Court of Appeals affirmed Vergara's conviction. The appellate court said:

In the case at bench (sic), the prosecution had proven the identity of accused-appellant beyond reasonable doubt through the testimonies of prosecution witnesses Villanueva and Manalo. Appellant failed to controvert the testimony of prosecution witness Villanueva that accused-appellant was pointed to by witness Manalo out of nine (9) persons. Thus, the trial court had no reason to consider the identification made by witness Manalo in the police station as one that stemmed from a suggestive identification procedure used by the police.

The trial court was correct in regarding the difference in height as a minor matter. What is vital is that the witness recognized accused in the line-up and reiterated her identification of accused-appellant in open court. In the absence of ill-motive on her part to testify falsely against accused-appellant, the trial court is correct in giving full faith and credence to the testimony of witness Manalo.^[7]

Petitioner timely filed a motion for reconsideration, but it was denied by the appellate court in its resolution of March 26, 1997.

Insisting on his innocence, petitioner now submits to this Court the following sole assignment of error:

THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN GIVING MORE CREDENCE TO THE TESTIMONY OF COMPLAINANT CATHERINE MANALO THAN THE TESTIMONIES OF THE ACCUSED AND HIS WITNESS AND CONSEQUENTLY FURTHER ERRED IN FINDING THE ACCUSED GUILTY OF THE CRIME BEYOND REASONABLE DOUBT.^[8]

The issue of whether or not the guilt of the accused had been proven beyond reasonable doubt hinges, in our view, on the credibility of witnesses presented by the prosecution and the defense. Crucial in this regard is the identification made by the complaining witness, Catherine Manalo, of the petitioner, Sgt. Elmer T. Vergara, as one of the malefactors.

Petitioner vehemently insists that the contradictions in Catherine Manalo's testimony are not mere minor inconsistencies. According to petitioner, while private complainant below described him as around 5'6"-5'7" tall, weighing about 160-165 lbs., and sporting a military haircut; in truth, he is only 5'3-1/2" tall, tips the scale at less than 150 lbs., and had long hair at the time of the incident. Given these discrepancies, petitioner insists that private complainant below must have been referring to another person and not to him.

Basically, petitioner's contention raises questions of facts, which traditionally fall within the province of the trial court and the Court of Appeals. After reviewing the records of this case, we find no reason to disturb the assessment of the trial court of all the pieces of evidence submitted before it, particularly as its findings and conclusions had been affirmed by the appellate court.

In this case, petitioner has been convicted on the basis of the positive identification made by private complainant below. As the Court of Appeals stressed, petitioner was categorically identified by the private complainant not just once, but twice, as one of the armed men who robbed her. The first time was during the police line-up of nine (9) persons on October 27, 1990 and the second time was during her testimony in open court. The records show that private complainant had no motive to falsely testify against petitioner. We agree with the lower courts that the discrepancies in the private complainant's description are not decisive. Her description was based on visual estimates, which cannot be expected to be perfect. What is decisive is that petitioner was positively and categorically identified as one of the robbers, not just once but twice, by private complainant, Catherine Manalo. Her recollection of his description might suffer from imperfection regarding his height, weight and personal appearance. But we note less. Jurisprudence recognizes that victims of crime have a penchant for seeing the faces and features of their attackers, and remembering them.^[9] That some variance as to petitioner's height and weight might exist in her recollection, in comparison to his statistical measurement does not destroy her credibility. That the trial court found this variance inconsequential does not render its findings on the credibility of witnesses erroneous. Such findings are accorded great respect and will be sustained by the appellate courts unless the trial court overlooked, misunderstood, or misapplied some facts or circumstances of weight and substance which could alter the decision or affect the result of the case.^[10] Here, the important thing is that complaining witness Catherine Manalo identified the petitioner as one of the perpetrators of the robbery twice, without any presumptions or suggestion from the police at the line-up or the court at the trial.

Petitioner also argues that the prosecution failed to contradict his alibi. He submits that the prosecution failed to prove that he had a car available to him, or that he drove one from San Pedro, Laguna to Pasig, Metro Manila. Petitioner further insists that the trial court's finding that the place where the crime was committed is less than an hour's drive by car and can easily be reached by one who, like petitioner, had a car available to him, is erroneous and unsupported by the evidence on record.

Judicial notice could be taken of the travel time by car from San Pedro, Laguna to Pasig City, Metro Manila, because it is capable of unquestionable demonstration, and nowadays is already of public knowledge, especially to commuters.^[11] We find no error in the trial court's finding that it was not impossible for petitioner to be at the scene of the crime, despite his alibi that he was engaged in intelligence work in San Pablo Laguna that same afternoon of October 19, 1990.

For alibi to prosper, it would not be enough for the accused to prove that he was elsewhere when the crime was committed. He must further demonstrate that it would have been physically impossible for him to have been at the scene of the crime at the time of its commission.^[12] It is essential that credible and tangible proof of physical impossibility for the accused to be at the scene of the crime be presented to establish an acceptable alibi.^[13] Petitioner failed to meet this test. While petitioner could have been working as intelligence agent in San Pedro, Laguna from October 19 -21, 1990, contrary to his claim, it was not physically impossible for him to have been in Pasig City, Metro Manila on the day of the commission of the crime.