

FIRST DIVISION

[G.R. No. 118334, February 20, 2001]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. LARRY
CONSEJERO Y PASCUA AND ROMMEL MALAPIT (AT LARGE),
ACCUSED.**

LARRY CONSEJERO Y PASCUA, ACCUSED-APPELLANT.

D E C I S I O N

YNARES-SANTIAGO, J.:

This is an appeal from the February 2, 1994 Decision^[1] of the Regional Trial Court of Aparri, Cagayan, Branch 6, in Criminal Case No. VI-619, convicting accused-appellant Larry Consejero y Pascua of the crime of robbery with homicide.

The information against accused-appellant alleges:

That on or about May 25, 1989, in the municipality of Lal-lo, province of Cagayab (sic), and within the jurisdiction of this Honorable Court, the said accused LARRY CONSAJERO (sic) and ROMMEL MALAPIT, armed with an M-14, conspiring together and helping one another, with evident premeditation, with intent to gain, and by use of violence against and intimidation of persons, did then and there wilfully, unlawfully and feloniously take, steal and carry away against the will of the owner, Jaime Israel, one motor engine, Briggs and Straton, worth THREE THOUSAND SEVEN HUNDRED EIGHTY SIX (P3,786.00) PESOS, Philippine Currency; and that on the same occasion (sic) of the Robbery, and in furtherance of their criminal design, the said accused, LARRY CONSAJERO (sic) and ROMMEL MALAPIT, armed with an M-14 and a deadly weapon, conspiring together and helping one another with intent to kill and with treachery, did then and there wilfully, unlawfully and feloniously attack, assault and stabbed one DESTO CASTILLO and one DIONISIO USIGAN inflicting upon them several injuries in the different parts of their bodies which caused their death.

That the crime was committed in an inhabited place.

CONTRARY TO LAW.^[2]

Upon arraignment on April 30, 1991,^[3] accused-appellant Larry Consejero entered a plea of not guilty. His co-accused, Rommel Malapit was not arraigned, being still at large. At the trial, the prosecution presented the following witnesses: Jaime Israel, Melchor Pulido, Romana Castillo, Zenaida Usigan and Dr. Cesar R. Real.

The facts are as follows:

In the morning of May 26, 1989, two dead bodies were discovered not far from the river bank of Barangay Jurisdicción, Lal-lo, Cagayan. Found lying on the ground, face down, drenched in his own blood with hands tied at the back, was the lifeless body of Modesto Castillo. Twenty meters away lay the dead body of Dionisio Usigan, who sustained thirty-one stab and hack wounds on the different parts of his body.^[4]

According to prosecution witness Jaime Israel, the victims were last seen alive in the afternoon of May 25, 1989, when the two went out to fish at the Cagayan River using his motorized banca with Briggs and Stratton engine.^[5]

Another prosecution witness, Melchor Pulido,^[6] a resident of Maxingal, Lal-lo, Cagayan, testified that in the afternoon of May 25, 1989, his neighbor, accused-appellant Larry Consejero, a CAFGU member, invited him to gather fish caught in the Cagayan River. Melchor Pulido agreed, and, together with accused-appellant, who was then carrying an M-14 armalite rifle, he rode a banca towards Barangay Jurisdicción, Lal-lo, Cagayan. That was between the hours of 8:00 o'clock and 9:00 o'clock in the evening of May 25, 1989. With them was accused Rommel Malapit, who was also armed with an M-14 armalite rifle.

After emptying the contents of the fishnets, they noticed at a distance a motorized banca carrying two persons. They paddled towards the motorized banca. When they got nearer, accused-appellant asked the two persons in the boat, "*Were you not the ones who usually demand quota from Barangay Captain Bacuyan?*" The two replied, "*No.*" Then, accused-appellant asked the two if there was a nearby store. They answered in the affirmative, whereupon accused-appellant told them to accompany him and his companions to the said store. The two bancas then proceeded to the river bank. Upon reaching the bank, however, accused-appellant said that only one should accompany them. Thus, one of them, who turned out to be Dionisio Usigan, went with accused-appellant Larry Consejero and accused Rommel Malapit towards the northeast direction. Left behind were Melchor Pulido and Modesto Castillo. After ten (10) minutes, accused-appellant and accused Rommel Malapit returned holding an armalite rifle and a ten-inch bolo, respectively. Dionisio Usigan was not with them anymore.

Upon orders of accused-appellant, Rommel Malapit tied the hands of Modesto Castillo at his back using a portion of a fishnet and, thereafter, they brought him to the same northeast direction where Usigan was taken. Again, only Larry Consejero and Rommel Malapit came back; Modesto Castillo was no longer with them.

Accused-appellant then detached the engine of the motorized banca ridden by Usigan and Castillo, while Melchor Pulido was told to stand as look-out. After they loaded the engine in their banca, the three of them headed home. On the way, the two accused told Melchor Pulido that the persons they met were already dead. Accused-appellant threatened to kill Melchor Pulido and his family if Pulido reveals what he knew. After they alighted from the banca, Pulido went straight home while accused-appellant and Rommel Malapit brought the engine of the motorized banca to a cogonal area.

The following morning, May 26, 1989, the lifeless body of Modesto Castillo and Dionisio Usigan were found not far from the river bank of Barangay Jurisdicción, Lal-

lo, Cagayan. The motorized banca ridden by the two deceased was nowhere to be found.^[7]

The postmortem examination of the two deceased, conducted at around 12:00 noon of May 26, 1989 by Dr. Cesar R. Real, Municipal Health Officer of Lal-lo, Cagayan, disclosed that Modesto Castillo and Dionisio Usigan died approximately between 7:00 o'clock p.m. to 12:00 o'clock midnight of May 25, 1989. Modesto Castillo sustained eight (8) incised and stab wounds; while Dionisio Usigan sustained a total of thirty-one (31) hack, stab, and incised wounds on the different parts of his body.^[8]

Melchor Pulido explained that he executed a sworn statement only on September 12, 1990, because he was afraid that accused-appellant would make good his threat to kill him and his family if he would reveal what he knew. In fact, they had to move to the house of his parents-in-law in order to avoid accused-appellant, who happened to be their neighbor. It was only when accused-appellant was no longer a member of the CAFGU that he gathered enough courage to report to the authorities.^[9]

The defense relied mainly on denial and alibi. Accused-appellant testified that he became a CAFGU member sometime before May 25, 1989, and was accordingly issued an M-14 armalite rifle. He recounted that in the afternoon of May 25, 1989, on his own initiative, he went to the Office of SPO3 Rogelio Constantino, PNP, Lal-lo, Police Station to ask permission to go to the then 117th Philippine Constabulary Company at Barangay Punta, Aparri, Cagayan, to report the presence of some New People's Army members along the other side of the Cagayan River at Sitio Sianig, Barangay Fabrica, Lal-lo, Cagayan. Accused-appellant left his M-14 armalite rifle with one Rey Conseja, another CAFGU member, before going to Aparri, Cagayan. He arrived there at around 3:00 o'clock in the afternoon of May 25, 1989, and immediately reported to SPO3 Edgardo Daniel.^[10]

Accused-appellant further testified that on his way to get a ride home, he met two police officers in the person of SPO1 Porfirio Divina and SPO3 Amante Gorospe, who invited him to have a drinking spree inside the headquarters of the PNP of Aparri. They later transferred to the house of SPO1 Porfirio Divina where they resumed drinking. Accused-appellant spent the night in said house. The following morning, May 26, 1989, at around 6:00 o'clock, he left the house of SPO1 Divina, rode a passenger jeepney and went straight home.^[11] Accused-appellant claimed that he ceased to be a member of the CAFGU and surrendered his M-14 armalite rifle on March 16, 1990. From then on, he stayed most of the time in Aparri, Cagayan, for fear of the NPAs who were allegedly after him.^[12]

The version of accused-appellant was corroborated by the testimony of SPO1 Porfirio Divina, SPO3 Edgardo Daniel, SPO3 Rogelio Constantino and Patrolman Virgilio Camacam.

On February 2, 1994, the trial court rendered the judgment of conviction under review. The dispositive portion thereof reads:

"WHEREFORE, premises considered, this Court, in the interest of justice, after trial on the merits of this case, finds LARRY CONSEJERO y Pascua,

one of the two (2) accused herein, Rommel Malapit, the other of the two (2) accused herein, being still at-large, GUILTY beyond reasonable doubt, as principal, of the crime of Robbery With Homicide, as defined and penalized under Article 293 and 294, No. 1 of the Revised Penal Code, and hereby sentences him to suffer the penalty of RECLUSION PERPETUA and to indemnify the Heirs of DIONISIO USIGAN, one of the two (2) deceased victims herein, in the amount of FIFTY THOUSAND PESOS (P50,000.00), Philippine Currency, as well as the Heirs of MODESTO OR DESTO CASTILLO, the other of the two (2) deceased victims herein, in the amount of FIFTY THOUSAND PESOS (P50,000.00), Philippine Currency, and to pay the costs of suit.

The bail bond set for the provisional liberty of Larry Consejero, one of the two accused herein, is hereby cancelled and, immediately after the promulgation of this Decision, the Officer-In-Charge of the Provincial Jail of Cagayan at Aparri, Cagayan or his duly authorized representative, is hereby ordered to immediately transmit his person for confinement at the Provincial Jail of Cagayan at Tuguegarao, Cagayan, and, immediately thereafter, the Provincial Warden of Cagayan at Tuguegarao, Cagayan shall transmit his person to the National Penitentiary at Muntinlupa, Rizal.

SO ORDERED.^[13]

Hence, accused-appellant is before this Court, contending that:

I

THE REGIONAL TRIAL COURT ERRED IN CONSIDERING THE EVENTS TESTIFIED TO BY MELCHOR PULIDO AS CONSTITUTING FACTS AND CIRCUMSTANCES FROM WHICH GUILT COULD BE INFERRED; AND, IN CONSIDERING SAID FACTS AND CIRCUMSTANCES TO HAVE BEEN CORROBORATED BY OTHER PROSECUTION EVIDENCE;

II

ASSUMING THAT THE REGIONAL TRIAL COURT DID NOT COMMIT THE FIRST ERROR, IT ERRED IN GIVING CREDENCE TO THE TESTIMONY OF MELCHOR PULIDO AS SAID TESTIMONY IS FILLED WITH IMPROBABILITIES; AND, HE REVEALED TO THE AUTHORITIES HIS KNOWLEDGE OF THE ALLEGED CRIME ONLY AFTER MORE THAN A YEAR AND THREE MONTHS FROM THE TIME OF THE ALLEGED COMMISSION OF THE CRIME.

III

THE REGIONAL TRIAL COURT ERRED IN REJECTING ACCUSED-APPELLANT'S DEFENSE OF ALIBI.^[14]

The appeal is without merit.

Like a tapestry made up of strands which create a pattern when interwoven, the circumstances proved should constitute an unbroken chain which leads to one fair

and reasonable conclusion, that the appellant is guilty beyond reasonable doubt. In other words, the circumstances or a combination thereof, should point to overt acts of the appellant that would logically usher to the conclusion and no other that he is guilty of the crime charged.^[15] Thus, Rule 133, Section 4 of the Rules of Court, provides:

Sec. 4. *Circumstantial evidence, when sufficient.* - Circumstantial evidence is sufficient for conviction if:

- 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.

In the case at bar, the evidence presented by the prosecution established the following circumstances pointing to the fact that accused-appellant was the author of the killing of the two deceased and the unlawful taking of the engine of the motorized banca:

1) In the afternoon of May 25, 1989, the two deceased went out fishing at the Cagayan River using Jaime Israel's motorized banca with Briggs and Straton engine.

2) Between the hours of 8:00 and 9:00 o'clock in the evening of May 25, 1989, prosecution witness Melchor Pulido together with accused-appellant and accused Rommel Malapit, who were both armed with M-14 armalite rifles, also went fishing at the Cagayan River, particularly in Barangay Jurisdicción, Lal-lo, Cagayan.

3) When the three were emptying the fish nets, they noticed a motorized banca carrying two persons who turned out to be the two deceased. Accused-appellant asked the two persons on board the motorized banca if they were the ones exacting quota from Barangay Captain Bacuyan, to which they replied, "No."

4) Accused-appellant requested the two deceased to accompany them to a nearby store. When they reached the river bank the two accused took along with them Dionisio Usigan and proceeded towards the northeast direction; while Modesto Castillo was left on the river bank.

5) After ten minutes, accused-appellant, who was holding his armalite rifle, and Rommel Malapit, who was clasping a 10-inch bolo in his hand, went back, but the deceased Dionisio Usigan was no longer with them.

6) Accused-appellant ordered Rommel Malapit to tie the hands of Modesto Castillo, which he obeyed using a portion of a fishnet. Thereafter, the two accused brought Modesto Castillo towards the same northeast direction. That was the last time Castillo was seen alive.

7) The two accused detached the engine of the motorized banca and