

SECOND DIVISION

[G.R. No. 113269, April 10, 2001]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. OSCAR CONDE Y LUTOC, ALLAN ATIS Y ABET AND ALEJANDRO PEREZ, JR. Y CARSILLAR, ACCUSED, OSCAR CONDE Y LUTOC, ALLAN ATIS Y ABET, ACCUSED-APPELLANTS.

D E C I S I O N

QUISUMBING, J.:

On appeal is the decision^[1] dated December 15, 1993, of the Regional Trial Court, Branch 129, Kalookan City finding accused Oscar Conde, Allan Atis and Alejandro Perez, Jr., guilty of the special complex crime of robbery with homicide and sentencing each of them to suffer the penalty of *reclusion perpetua* with the accessory penalties under the law, and to jointly and severally indemnify the heirs of each of the victims, Sukhdev Singh and Biant Singh, in the amount of P50,000.00.

Accused Oscar Conde, Allan Atis and Alejandro Perez, Jr., were arraigned in an Information which reads:

That, on or about the 25th day of May, 1992 in Kalookan City, Metro Manila and within the jurisdiction of this Honorable Court, the above-named accused, conspiring together and mutually helping one another, with intent to gain and by means of threats and intimidation upon the persons of SUKHDEV SINGH Y DHALNAL and BIAANT SINGH Y SIDHU, did then and there wilfully, unlawfully and feloniously take, rob and carry away cash of unestimated amount and assorted merchandise such as umbrellas and beach towels, that on the occasion of the said robbery and for the purpose of enabling them to take, rob and carry away the aforementioned articles, the herein accused in pursuance of their conspiracy, did then and there wilfully, unlawfully and feloniously and with intent to kill, attack and stab with bladed weapons upon the persons of SUKHDEV SINGH Y DHALNAL and BIAANT SINGH Y SIDHU on the different parts of the body, thereby inflicting upon said victims serious physical injuries which caused their death on the above-specified date.

CONTRARY TO LAW.^[2]

The accused entered pleas of not guilty.

During trial, the prosecution presented the testimonies of Apollo Romero, PO3 Rodencio Sevillano, and Dr. Mario Gajardo as witnesses.

Apollo Romero, a resident of Santolan Street, Kalookan City, Metro Manila, testified that on May 25, 1992 at about 8:00 A.M., he was home sitting by the window and drinking coffee when he saw four men in Santolan Street block the path of two Indian nationals (*bombay*) on a motorcycle. One of the men later identified as Oscar Conde poked a gun at the two Indians while his three companions approached and stabbed the Indians. He later identified the other two assailants as Alejandro Perez, Jr., and Allan Atis. He also saw Allan Atis take the goods^[3] which were being sold by the two Indians on installment. After the stabbing, the four men fled from the crime scene towards Mabolo Street. The fourth assailant remained unidentified. Romero was about 25 to 35 meters away from the place where the crime was committed.^[4] PO3 Rodencio Sevillano, testified that he was assigned with the Intelligence and Investigation Division (IID) of the PNP, Kalookan City. On May 25, 1992, he was told to investigate the abovesited incident. On May 30, 1992, the police arrested the three accused. Police recovered the weapons used in the robbery, when Felicidad Macabare, Conde's wife, went to the police station to talk to the accused. These weapons were discovered inside her bag after a routine inspection. Sevillano admitted, however, that they did not have a warrant of arrest when they apprehended the accused. Nor did they have a search warrant when they inspected Felicidad's bag and when they searched the house of a certain Jimmy where they found the stolen items.^[5] Dario Gajardo, a doctor employed in the PNP Crime Laboratory Service at Station 4, Central Police District, Quezon City performed the *post-mortem* examination on the bodies of Sukhdev Singh and Biant Singh. He testified that the cause of death was cardio-respiratory arrest due to shock and hemorrhage secondary to stab wounds. Biant Singh sustained stab wounds on his lower stomach while Sukhdev Singh sustained stab wounds at the back and right portion of the ribs.^[6] The defense presented five witnesses: Alejandro Perez, Jr., Oscar Conde, Allan Atis, Danilo Acutin and Anita Santos.

Alejandro Perez, Jr. testified that Oscar Conde and Allan Atis were his townmates from Catbalogan, Samar. According to Perez, on May 25, 1992, at about 7:00 A.M., he went to the Madrigal Compound at Las Piñas, Metro Manila, to visit his cousin Danilo and apologize for not attending his uncle's 40th death anniversary and their fiesta. Upon his arrival they went to the Pulang Lupa Cemetery and visited the graves of his uncle and their grandfather. From the cemetery, they went home where they drank some beer until late afternoon. Together with Oscar Conde and Allan Atis, he was arrested in Tandang Sora, Quezon City on May 30, 1992.^[7] Danilo Acutin corroborated Alejandro's testimony.^[8] Oscar Conde testified that on May 25, 1992, he was in Barangay Polo Street, Parañaque mending his fishing net. He was with his wife, Felicidad Macabare; and his uncle, Tancio Loto. He said the police arrested Alejandro Perez, Jr., Allan Atis, Felicidad Macabare and him in Tandang Sora, Quezon City on May 30, 1992.^[9] (Later reports indicated, however, that Felicidad was not among those arrested.^[10])

Allan Atis stated that he was in MCU where he worked as a construction worker for a certain Romy Ramos on May 25, 1992. He denied having anything to do with the death of the two Indian nationals.^[11] On December 15, 1993, the trial court rendered its decision, thus:

WHEREFORE, premises considered, this Court finds the accused Oscar Conde y Lutoc, Allan Atis y Abet and Alejandro Perez, Jr. y Carsillar guilty beyond reasonable doubt of the special complex crime of Robbery with Homicide as defined and penalized under Article 294, paragraph 1 of the Revised Penal Code, in relation to the *Solis* ruling. Accordingly, the 3 accused shall each serve the penalty of *Reclusion Perpetua*, with all the accessory penalties under the law.

Pursuant to Section 7, Rule 117 of the 1985 Rules on Criminal Procedure, as amended, the 3 accused shall be credited with the period of their preventive detention.

By way of compensatory damages, the accused shall jointly and severally indemnify the heirs, if any, of deceased SUKHDEV SINGH and BIAN T SINGH in the sum of P50,000.00 for each, without subsidiary imprisonment in case of insolvency.

SO ORDERED.^[12]

The three accused appealed. However, the counsel *de parte* for accused Alejandro Perez, Jr., Atty. Jose M. Marquez, failed to file brief for Perez, prompting this Court to dismiss his appeal. The decision of the trial court became final and executory with respect to accused Alejandro Perez, Jr.^[13] Hence the present appeal concerns now only appellants Atis and Conde, who filed their separate briefs.

Atis avers that the trial court erred:

I

...IN GIVING WEIGHT AND CREDENCE TO THE TESTIMONY OF THE PROSECUTION WITNESSES AND IN DISREGARDING THE CLAIM OF THE DEFENSE.

II

...IN FINDING ACCUSED-APPELLANT ALLAN ATIS GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF ROBBERY WITH DOUBLE HOMICIDE DESPITE OF THE INSUFFICIENCY OF EVIDENCE.^[14]

Atis argues that the prosecution failed to establish his identity as one of the perpetrators of the crime. He alleges that Apollo Romero only saw him in court. Atis likewise claims that he was arrested without any warrant of arrest several days after the crime.^[15] Oscar Conde avers that the trial court erred in:

I

...NOT HOLDING THE ARREST OF THE ACCUSED ILLEGAL

II

...ACCORDING THE TESTIMONIES OF PROSECUTION WITNESSES
APOLLO ROMERO AND PO3 RODENCIO SEVILLANO FULL CREDENCE

III

...HOLDING THE ACCUSED GUILTY BEYOND REASONABLE DOUBT OF THE
CRIME OF ROBBERY WITH DOUBLE (sic) HOMICIDE.^[16]

Oscar Conde claims that he was illegally arrested by the authorities. He adds that the Indian Embassy was pressuring the police to solve the murder. He avers that the testimony of Romero is insufficient to sustain his conviction. He cites the delay of Romero in reporting what he saw, hence Romero's testimony is unbelievable. Lastly, Conde wants this Court to disregard as evidence the stolen items and weapons illegally seized by the police.^[17] The Office of the Solicitor General, for its part, filed its appellee's brief only in regard to Oscar Conde's appeal. According to the OSG, the testimony of Apollo Romero deserves full faith and credence since the appellants failed to show any improper motive on his part. The same is true for the testimony of PO3 Sevillano who also enjoys the presumption of regularity in the performance of his official duties. In conclusion, the Solicitor General prays that the conviction of the appellants be affirmed. Citing *People vs. Escandor*, 265 SCRA 444, 445 (1996), the OSG stresses that the findings of the trial court, especially on the credibility of witnesses, are generally accorded great weight and respect on appeal, because the trial court is in the best position to make an honest determination of the witnesses' behavior and deportment during trial.^[18] In substance, the issues raised by both appellants are (1) Whether or not the identification made by Apollo Romero deserves credence; (2) Whether or not the arrests of the appellants were illegal; (3) Whether or not the alleged stolen objects, i.e., the beach towel and umbrella, can be presented in evidence.

Anent the first issue, we are in agreement with the submission by the Office of the Solicitor General. First, factual findings of the trial court are conclusive upon this Court and its evaluation regarding the credibility of witnesses are given great weight and respect **unless** there is a showing that the trial court had overlooked, misunderstood or misapplied some fact or circumstance of weight and substance that would have affected the result of the case.^[19] Being in a better position to observe the witnesses for the prosecution as well as the defense, the trial court's appreciation of their testimony, truthfulness, honesty and candor deserves the highest respect.^[20] Allan Atis insists that it was impossible for Romero to have identified him since Romero only saw him inside the court room and that Romero had not seen him before. However, there is nothing in law and jurisprudence which requires, as a condition *sine qua non* for the positive identification by a prosecution witness of a felon, that witness must first know the latter personally.^[21] The fact that Romero never saw Atis before the crime was committed does not detract from the credibility and reliability of Romero's testimony.

Oscar Conde insists that the delay of Romero in reporting the incident makes his testimony unworthy of credence. It is however well settled in jurisprudence that delay in divulging the names of perpetrators of a crime, if sufficiently explained,