

SECOND DIVISION

[G.R. No. 106873, October 03, 2000]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
GILBERT GONZALES Y BUHATAN, ARISTON SERRANO Y MAGAT,
CHARLES DACANAY Y MARCHADESCH, MICHAEL SALAZAR Y
CRIZALDO AND VICTOR ORTEGA Y COÑE, ACCUSED-
APPELLANTS.**

D E C I S I O N

BUENA, J.:

Accused-appellants Gilbert Gonzales, Ariston Serrano and Victor Ortega, together with accused Charles Dacanay and Michael Salazar, were charged with the crime of Robbery with Homicide based on an Information^[1] which reads:

"That on or about the 23rd day of April, 1992 in Valenzuela, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring together and mutually helping one another, by means of force and intimidation employed upon the person of one FARITA PUNZALAN y MARTIN and with intent to gain, did then and there wilfully, unlawfully and feloniously rob and carry away a bag containing an undetermined amount of cash and jewelry belonging to said FARITA PUNZALAN y MARTIN, to the damage and prejudice of the latter in an undetermined amount; that on the occasion of said Robbery, the above-named accused, in pursuance to their conspiracy, with abuse of superior strength and treachery, did then and there wilfully, unlawfully and feloniously, and with intent to kill, hit said FARITA PUNZALAN with stone and wood, thereby inflicting upon the latter serious physical injuries which injuries caused her death."

Upon arraignment on May 4, 1992, all the accused, assisted by their respective counsels, pleaded not guilty to the crime charged.

After trial, the court rendered its decision dated July 6, 1992, the dispositive portion of which reads, thus:

"WHEREFORE, in view of the foregoing, the accused GILBERT GONZALES, VICTOR ORTEGA, and ARISTON SERRANO are hereby found guilty beyond reasonable doubt of the crime of ROBBERY WITH HOMICIDE and hereby each sentenced to suffer the penalty of RECLUSION PERPETUA; to indemnify the heirs of the victim FARITA PUNZALAN in the sum of P53,000.00; and to pay the costs.

"The prosecution having failed to prove beyond reasonable doubt the guilt of accused MICHAEL SALAZAR and CHARLES DACANAY, these two accused are hereby ACQUITTED of the crime charged with costs de

officio.

"SO ORDERED."^[2]

The prosecution's case was anchored mainly on the testimonies of two alleged eyewitnesses, Lilia Pangilinan and Juanito Navales.

Lilia Pangilinan testified that on April 23, 1992, at around 5:00 o'clock in the morning, she went to buy bread at the Cuevas Bakery which is a five minute walk from her residence at Santol St., San Antonio Subd., Dalandanan, Valenzuela, Metro Manila. On her way home, she heard a noise from a hut near the railroad track. Curious, she went to the hut, peeped through the hole and saw a woman, gagged and being clubbed by the accused with a piece of long wood. She did not recognize the woman because her face was covered with blood. Accused Dacanay and Serrano held the hands of the victim while another accused held the feet. Then she heard accused-appellant Ortega say, "*Sige paluin nyo na*" and later uttered, "*Sige, hubaran nyo na.*" Thereafter, accused-appellant Serrano removed the victim's pants and raised her dress. They did not do anything to the victim. Accused-appellant Gonzales hit the victim with a stone on the forehead. They left the hut and went towards MacArthur Highway.^[3]

Prosecution witness Juanito Navales, alias "Paniki," testified that on April 23, 1992, at about 5:00 o'clock in the morning, he went to buy bread. When he reached the railroad track at Dalandanan, he saw accused-appellant Gilbert Gonzales pull Farita Punzalan to a hut located beside the railroad track. He hid himself beside the hut. He saw accused-appellant Ariston Serrano remove Farita's pants. A handkerchief was tied to cover the mouth of the victim. Thereupon, accused-appellant Victor Ortega lifted a big stone, ½ feet in diameter, and struck the head of the victim. Co-accused Michael Salazar acted as the look-out man. The group then ran, carting away the bag of the victim.

The police found the victim unconscious outside the nearby hut with her mouth full of blood. Her pants and panty were rolled down to her knees, and beside her was a piece of stone used in bashing her head.

The autopsy revealed that Farita Punsalan sustained the following injuries:

"Pallor, generalized. Contused abrasion, forehead, right side, 3.5 x 5.0 cms.

"Abrasion, nose bridge, 1.5 x 2.0 cms.

"Contusion, zygomatic area, right side, 2.0 x 2.4 cms., neck, left side, 3.0 x 4.0 cms, breasts area, right side, 5.0 x 9.0 cms.

"Hematoma, periorbital, bilateral, right, 5.0 x 7.0 cms., left, 4.0 x 5.0 cms, preauricular area, right side, 5.0 x 9.0 cms.

"Scalp hematoma, generalized.

"Fracture, comminuted, skull, frontal bone and the bones of the anterior and middle fossa.

"Genital findings: with fresh deep hymenal lacerations at 9:00, 8:00, 7:00 and 6:00 o'clock, position corresponding to the face of a watch, edges of which are edematous and coaptable.

"Other visceral organs, congested.

"Stomach contains small amount of blackish fluid.

"CAUSE OF DEATH: Traumatic head injury."^[4]

Accused-appellants professed their innocence claiming that they were elsewhere at the time of the incident.

Accused-appellant Gilbert Gonzales testified that he does not go out with any group because he attends to his work at Café de Nova as waiter. On April 21, 1992, he did not report for work and asked permission to go on leave. On April 22, 1992, he went to Caloocan. From 7:00 o'clock to 10:00 o'clock in the evening, he played basketball. He went to bed at 11:00 o'clock. The following day, or on April 23, 1992, he was awakened by his mother and brother who informed him that a woman was found dead near their hut. He followed his mother to the hut and found the dead woman covered with newspaper. He does not know the woman.

On April 24, 1992, at about 2:00 o'clock in the afternoon, the Valenzuela Police, led by SPO1 Arthur Quiñones, without a warrant of arrest, unceremoniously barged inside their house looking for his brother. When they saw him, he was arrested and brought to the Police Station.^[5]

Accused-appellant Victor Ortega denied any participation in the crime, maintaining that he was asleep at the time of the incident. He slept at about 10:00 o'clock in the evening of April 22, 1992, and woke up at about 9:00 o'clock the following day. He stayed at home and had not heard of any news that a dead woman was found along the railroad track. He knew Boy Paniki as a stowaway and often saw him in the hut located along the railroad, but belied Paniki's statement that he hit Farita Punzalan on the head with a stone. He was arrested without a warrant on April 26, 1992.^[6]

Accused-appellant Ariston Serrano narrated that he was at home on April 22, 1992. He slept at 9:00 o'clock and woke up at 4:30 the following morning to cook his *baon*. He works as a delivery helper at Cosmic Industries. He claims that he does not take drugs, and that he is not a gangmate of Paniki and the other accused-appellants. The scar on his left cheek is the result of the injuries caused by accused-appellant Victor Ortega when the latter hacked him with a bolo.^[7]

The trial court found the testimonies of the prosecution witnesses to be inconsistent on material points, but nonetheless, gave credence to Navales' narration of facts. Consequently, it found the accused-appellants guilty of the crime charged beyond reasonable doubt and sentenced them to suffer the penalty of *reclusion perpetua*, and to indemnify the heirs of Farita Punzalan in the sum of P53,000.00. Accused Michael Salazar and Charles Dacanay were acquitted.^[8]

In disregarding the testimony of Lilia Pangilinan, the trial court opined:

"The following were found by the Presiding Judge during the said ocular inspection:

"The railroad tracks were nearby the hut. The hut had vertical slats 3 inches apart in front and other side of the said hut and a rectangular hole serving as a window. There were indications of newly cut shrubs or bushes fronting the door of the hut. **Between these bushes and the door, the body of Farita Punzalan was said to have been found.** The observation of the Court is, that if these slats were not covered at the time of the crime, one does not have to peep in to see what was happening inside the hut. The flooring is of tile slabs which are not permanently attached to the ground. **The height from the floor up to ceiling is five (5) feet seven (7) inches only. It can be stated in this regard that a piece of wood as long as 7 feet 7 inches long (Exhs. H, H-1 and H-2) in this case cannot be raised and swung downwards because of the limited height of the ceiling. The width of the hut is 7 feet 5 ½ inches, the length is 7 feet 6 inches. There was no indication of blood stain on the flooring. Inside the hut is a `banggera.' These facts discredit the testimony of Lilia Pangilinan that the killing was done inside the hut and the wooden club was swung at her inside the hut.**

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"After hearing the testimony of Lilia Pangilinan and studying her written statements to the police (Exhs. G, G-1, G-2) the Court is disregarding these because these do not reflect the true facts as found by this Court from the other evidences on record. First, her house which is at Santol St., Pacheco Subdivision, Valenzuela, Metro Manila is really far away from the scene of the crime. This Presiding Judge during the ocular inspection even with the use of a car, found that said house was very far from the scene. Lilia Pangilinan could not be at the vicinity of the hut at that early morning 5:10 just to buy milk (according to her statement) or to buy bread (according to her testimony in Court). Secondly, her testimony that she saw the victim in her dream asking for help, and then her further testimony that she woke up and saw the victim was dead in a white dress tugging at her blanket, asking for help is within the realm of the supernatural which no judicial body can believe for purposes of deciding this case or other case for that matter. Third, her testimony that the swinging of the long club and the killing of Farita Punzalan inside the hut could not be possible because the club that long could not be swung inside the hut due to its small size and low ceiling." (Underscoring Supplied)^[9]

In giving credence to Juanito Navales' testimony, the trial court ratiocinated:

"The Court is giving more credence on the testimony of Juanito Navales Jr. alias Paniki on some vital or salient points. After piecing together other evidences presented, especially the ocular inspection, this Court is convinced that Paniki and not Michael Salazar was the look-out man of Victor Ortega, Gilbert Gonzales and Ariston Serrano, whose respective houses are just few steps away from the hut. As found by this Court, the

respective addresses of Gilbert Gonzales, Ariston Serrano and Victor Ortega were near Daang Bakal railroad tracks, and at their respective ages and proximity of their respective houses, their (sic) being barkadas as testified to by rebuttal witness Rolando Vergeniza is certainly believable. There is that pool or billiard near the store of Aling Remy where they used to come together to play and to drink, just beside the hut. At that early 5:00 or thereabouts their (sic) being together to perpetrate the crime charged is not impossible to be done. Michael Salazar who resides at Road 3 Lena Subdivision and Charles Dacanay who resides at Malakas St., Lena Subdivision could not be so near to Victor Ortega, Ariston Serrano and Gilbert Gonzales as personally observed by this Court during the ocular inspection at that early morning to be with them to perpetuate the act. Besides from the demeanor of Michael Salazar as he testified, saying that Paniki had a grudge against him that prompted him to implicate him this case, is believed by this Court. The participation of Charles Dacanay in this case was totally not proven.

"The testimony of Paniki in Court was corroborated in details such as those portions where Gilbert Gonzales pulled Farita Punzalan towards the hut and hit her nape with the piece of wood that could have prevented her from shouting for help; that Ariston Serrano removed her pants; that Victor Ortega dropped the stone (Exh. 1) on Farita Punzalan's head. It must be noted that Michael Salazar appeared in the testimony of Paniki as the look-out man. The Court, as stated above, believes that it was Paniki who was the look out man and not Michael Salazar because it was Paniki who slept in the hut the night before.

"The testimony of Paniki that the perpetrators were `sabog' or appeared drug (sic) is believed by the Court because during his testimony he said they were happy, nagtatawanan as they perpetrated the crime, a heinous crime, which cannot be the object of a laughing spree by persons not drugged."^[10]

Accused-appellants now come to us pleading this Court to reverse the trial court's decision. They raise the following errors:

A. VICTOR ORTEGA

I

THE TRIAL COURT ERRED IN GIVING WEIGHT AND CREDENCE TO THE TESTIMONY OF PROSECUTION WITNESS JUANITO "BOY" NAVALES, ALIAS BOY PANIKI.

II

THE TRIAL COURT ERRED IN CONVICTING ACCUSED-APPELLANT OF ROBBERY WITH HOMICIDE.

B. ARISTON SERRANO