

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JUNNEL LIHAYLIHAY Y MAGALLANES, JERRY BELMIL Y RODRIGUEZ AND ALIAS “CASCAS,” ACCUSED.

Ponente: SADANG, J.

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SADANG, J.:

This is an appeal from the March 18, 2011 Decision[1] of the Regional Trial Court of San Pedro, Laguna, Branch 93, finding accused-appellant Junnel Lihaylihay y Magallanes guilty of the crimes of robbery and robbery with homicide.

Antecedents of the Appeal

Accused-appellant Junnel Lihaylihay y Magallanes (hereafter, appellant), alias “Nonoy”, Jerry Belmil y Rodriguez[2] (hereafter, Jerby) and one alias “Cascas”[3] were charged with robbery with violence against or intimidation of persons in Criminal Case No. 5782-SPL and robbery with homicide in Criminal Case No. 5783-SPL. The amended informations read:[4]

Criminal Case No. 5782-SPL:

That on or about May 15, 2006, in the Municipality of San Pedro, Province of Laguna, Philippines and within the jurisdiction of this Honorable Court, accused Junel Lihaylihay being a minor and acting with discernment, conspiring and confederating with his co-accused with intent to gain did then and there willfully, unlawfully and feloniously at knife point take, steal and carry away a handbag containing one (1) Nokia 7610 cellphone valued at P24,000.000 and P2,000.00 cash, with a total worth of P26,000.00, all belonging to MARJORIE JOY GUEVARRA y MILLARES,5 to her damage and prejudice.

CONTRARY TO LAW.

Criminal Case No. 5783-SPL:

That on or about May 15, 2006, in the Municipality of San Pedro, Province of Laguna, Philippines and within the jurisdiction of this Honorable Court, accused Junel Lihaylihay being a minor and acting with discernment, conspiring and confederating with his co-accused with intent to gain and with violence and intimidation of persons, forcibly take, steal and carry away P400.00 cash from RENEBOY ALUNING y YAOTO and on the occasion of the robbery, accused with intent to kill and in order to defend their (accused) possession of the stolen cash taken from the former, attack, assault and stab the said RENEBOY ALUNING y YAOTO on the chest with a bladed weapon, thereby inflicting stab wounds on his chest, causing his instantaneous death, to the damage and prejudice of his surviving heirs.

CONTRARY TO LAW.

(All underscorings in the original.)

Appellant pleaded not guilty to both charges at the arraignment on June 27, 2006.[6]

At the February 27, 2007 pre-trial,[7] the parties stipulated, among others, on the identity of the appellant;

thereafter, trial ensued.

Prosecution evidence

Marjorie Joyce Millares Guevarra (hereafter, Marjorie) testified that at around 10 PM on May 15, 2006, while she and her live-in partner Reneboy Yaoto Aluning (hereafter, Reneboy) were walking along Daffodil Street, Camella Homes South I, Barangay Cuyab, San Pedro, Laguna, three men accosted them and announced a hold-up. Appellant frisked Reneboy and got P400.00 from his jacket. Appellant's two companions held Reneboy's right arm and because Reneboy resisted appellant suddenly stabbed him on the chest. Appellant then said, "Pre, yung bag," whereupon, one of his companions grabbed Marjorie's bag which contained P2,000.00 in cash and a 7610 Nokia cellphone worth P24,000.00. The three assailants fled the scene and Reneboy gave chase but he collapsed after ten steps. Marjorie ran towards Reneboy, embraced him, and shouted for help. A Crosswind vehicle happened to pass by and Marjorie asked the passengers to bring Reneboy to the hospital. Reneboy was rushed to the Beato Hospital in Tunasan, Muntinlupa City but due to lack of medical equipment he was moved to the Medical Center Muntinlupa (MCM) for emergency treatment. Reneboy expired on the operating table at 3 AM of May 16, 2006.

The Medico-Legal Certificate[8] issued by Dr. Orlando Salvador states that Reneboy suffered a "3 cm. stab wound, 5th ICS (R) parasternal area." The injury was a "penetrating stab wound, (R) chest S/P CP arrest 2x, hemothorax, cardiac tamponade, (R) ventricular lacerations, diaphragmatic injury, esophageal injury, DIC." [9]

Ronald Y. Aluning presented Reneboy's Certificate of Death[10] which states "cardiopulmonary arrest" as the immediate cause of death and "hypovolemic shock" the antecedent cause. Ronald testified on the expenses incurred by their family, presenting for that purpose the Record of Operation[11] and receipts for payment of hospital and medical bills in the total amount of P103,380.65,[12] burial permit,[13] funeral expenses (P29,000.00),[14] wake expenses in the total amount of P80,000.00, and burial expense of P50,000.00. Ronald testified that at the time of his death Reneboy was a CI Collector of Motortrade Inc. with a minimum wage salary.[15]

Defense evidence

Appellant raised the defenses of alibi and denial. He testified that at around 10:30 PM of May 15, 2006, he was in their house along the railroad at San Antonio, San Pedro, Laguna. He stayed home the whole day and never left the house. He denied having been to Camella Homes, South I Cuyab, San Pedro, Laguna or robbing Marjorie and stabbing Reneboy. He claimed that he does not know his co-accused, Jerry Belmil. He stated that he was at the bridge at the corner of Tunasan and San Pedro, Laguna when he was arrested on May 15, 2006 for a mauling incident. Appellant averred that he knows of no reason why Marjorie would accuse him of the crimes charged.

The defense presented the Certificate of Live Birth of appellant to show that he was born on January 22, 1989 and that he was a minor when the crime was committed on May 15, 2006.[16]

In a Decision,[17] dated March 18, 2011, the RTC found appellant guilty of the crimes charged. The fallo reads:

WHEREFORE, the Court hereby renders judgment:

1) Finding accused Junnel Lihaylihay GUILTY beyond reasonable doubt of Robbery with Violence Against or Intimidation of Persons in Criminal Case No. 5782-SPL and hereby sentencing him to suffer the indeterminate penalty of imprisonment from Four (4) Months of Arresto Mayor in its maximum period, as minimum, to Two (2) Years, Ten (10) Months and Twenty [(20)] days of prision mayor in its medium period, as maximum. In addition, accused Junnel Lihaylihay is ORDERED to pay Marjorie Joyce Millares Guevarra the amounts of P26,000.00 as actual damages, P50,000.00 as moral damages and P30, 000.00 as exemplary damages.

2) Finding accused Junnel Lihaylihay GUILTY beyond reasonable doubt of Robbery with Homicide in Criminal Case No. 5783-SPL and hereby sentencing him to suffer the penalty of Reclusion Perpetua. In addition, accused Junnel Lihaylihay is ORDERED pay the heirs of victim Reneboy Yaoto Aluning the amounts of P75,000.00 as civil indemnity, P75,000.00 as moral damages, P30,000.00 as exemplary damages, and P103,380.65 representing actual damages as well as P29,000.00 representing funeral expenses.

Considering that accused Junnel Lihaylihay is now over 21 years of age, thus making the application of Sec. 38 and 40 of R.A. 9344 as to the suspension of sentence moot and academic, he shall, in lieu on confinement in a regular penal institution, be made to serve his sentence in an agricultural camp and other training facilities that may be established maintained, supervised and controlled by the BUCOR, in coordination with the DSWD.

So as not to clog the docket of this Court, let these cases against JERRY BELMIL y RODRIGUEZ ET AL., & @ "CASCAS," who remain at-large, be archived and let alias warrants of arrest be issued for their early apprehension.

SO ORDERED.[18]

Hence, this appeal[19] raising these alleged errors:

- THE TRIAL COURT GRAVELY ERRED IN RENDERING JUDGMENT OF CONVICTION DESPITE THE FAILURE OF THE PROSECUTION TO PROVE WITH MORAL CERTAINTY THE ACCUSED-APPELLANT'S GUILT BEYOND REASONABLE DOUBT.
- GRANTING, BUT NOT NECESSARILY CONCEDED, THAT THE ACCUSED-APPELLANT MAY BE HELD CRIMINALLY LIABLE, THE TRIAL COURT GRAVELY ERRED IN FAILING TO CONSIDER HIS MINORITY IN THE IMPOSITION OF THE APPROPRIATE PENALTY.
- THE TRIAL COURT GRAVELY ERRED IN AWARDING EXEMPLARY DAMAGES WHEN THERE WAS NO AGGRAVATING CIRCUMSTANCE TO WARRANT THE GRANT THEREOF IN ACCORDANCE WITH ARTICLE 2230 OF THE CIVIL CODE OF THE PHILIPPINES.[20]

RULING

Appellant assails Marjorie's credibility insofar as she identified him as one of the perpetrators of the felony. He contends that the out-of-court identification at the police station wherein Marjorie pointed to him as the malefactor denies him fair trial to the extent that his in-court identification may have been influenced by impermissible suggestions. He also points to alleged inconsistencies in the testimony of Marjorie which raise doubts on the accuracy of her identification of the offenders.

The contention has no merit. Contrary to the claim of appellant, the records show that the police did not use the show-up method whereby a lone suspect is brought face to face with the witness for identification. It is clear from the statement[21] of Marjorie before the police on May 17, 2006 at 6:30 PM that a line-up of six (6) persons was presented to her and she singled out appellant as the one who stabbed Reneboy. The procedure followed by the police eliminated the danger of suggestion alleged by appellant. Moreover, the identification was made just two days after the startling occurrence. The face of appellant and the details of the crime were surely still fresh in Marjorie's memory. There is no reason for this court to doubt her identification of appellant as the felon. The RTC correctly ruled that the natural reaction of a victim of a violent crime is to strive to see the appearance of the perpetrators and observe the manner in which the crime is committed.

The alleged inconsistencies in the testimony of Marjorie do not ruin her credibility. They refer to minor details such as who frisked and held the arm of the victim and when Marjorie next saw appellant after the incident. They do not touch on significant facts crucial to the guilt or innocence of appellant. They are irrelevant to the elements of the offense and are thus not grounds for acquittal.[22] It must also be stated that on the issue of credibility of

witnesses, the well-entrenched rule is that the assessment of the trial judge is accorded great respect and will not be disturbed on appeal inasmuch as he was in a unique position to observe the demeanor of the witnesses on the stand.[23]

Appellant contends that the rule that lack of motive enhances credibility applies only to third parties who are detached from or who have no interest in the trial. Appellant argues that Marjorie is the live-in partner of the victim, hence, not a third party. The contention is specious. In criminal prosecution, motive as a factor in determining credibility refers to ill-

feelings that a witness may be harboring with respect to the person he is testifying against. The relationship of the witness to the victim has nothing to do with motive. Marjorie's being the live-in partner of Reneboy neither disqualifies her from being a witness nor affects her credibility. On the contrary, her innate desire to bring to justice those whom she knew committed the crime against Reneboy makes her identification of the appellant all the more credible.[24]

The elements of the crimes of robbery and robbery with homicide are: 1) there is personal property; 2) the property belongs to another; 3) the taking must be with intent to gain; 4) there is violence against or intimidation of any person, of force upon anything; and 5) homicide is committed "by reason" or "on the occasion of the robbery." [25] All these elements are present in this case. The prosecution has established beyond reasonable doubt that appellant took Marjorie's personal properties by brandishing a knife and stabbed Reneboy on the occasion of said robbery.

Appellant's defenses of denial and alibi cannot be sustained. Nothing is more settled in criminal law jurisprudence than that denial and alibi cannot prevail over the positive and categorical testimony of an eyewitness. Denial is an intrinsically weak defense which must be buttressed with strong evidence of non-culpability to merit credibility. Alibi is an inherently weak defense, which is viewed with suspicion and received with caution because it can easily be fabricated. For alibi to prosper, appellant must prove not only that he was at some other place when the crime was committed but that it was physically impossible for him to be at the locus criminis at the time of its commission.[26] Appellant did not even attempt to prove the elements of his defense.

Appellant asserts that even if he is guilty, he is entitled to the privileged mitigating circumstance of minority because it is not disputed that he was only 17 years old when the crime was committed. As to the crime of robbery with violence or intimidation against persons, he argues that because there is no mitigating or aggravating circumstance, the penalty should be imposed in its medium period, hence, the maximum term should have been prision correccional in its minimum period. With respect to the crime of robbery with homicide, he contends that the maximum term should be reclusion temporal in its medium period and the minimum term should be within the range of prision mayor.

There is merit in appellant's contention. The penalties imposed by the RTC must be modified.

It must be stated that the Information in Criminal Case No. 5782-SPL charges the crime of simple robbery. Thus, it alleges that the accused "with intent to gain did then and there willfully, unlawfully and feloniously at knife point take and carry away a handbag x x x belonging to Marjorie Joy Guevarra y Millares." There is no allegation of physical injury inflicted on Marjorie. Accordingly, the crime is punishable under paragraph 5 of Art. 294 of the Revised Penal Code (RPC).[27]

There is no question that appellant was 17 years old when the crime was committed. The informations were amended to reflect his minority. Thus, he is entitled to the privileged mitigating circumstance of minority. Under Article 68 (2)[28] of the RPC, where the accused is a minor "the penalty next lower than that prescribed by law

shall be imposed, but always in the proper period.”[29]

Robbery under paragraph 5 of Article 294 is punishable by prision correccional in its maximum period to prision mayor in its medium period. The penalty next lower in degree is arresto mayor maximum to prision correccional medium. Applying Republic Act (R.A.) 4103, otherwise known as the “Indeterminate Sentence Law” (ISL), there being no mitigating or aggravating circumstance, the maximum of the penalty shall be within the medium period of arresto mayor maximum to prision correccional medium or six (6) months and one (1) day to two (2) years, and four (4) months. The minimum of the penalty shall be within the range of the penalty next lower in degree, which is destierro maximum or arresto mayor in its minimum and medium period, the latter's range being one (1) month and one (1) day to four (4) months.

On the other hand, under paragraph 1 of Art. 294, robbery with homicide is punishable by reclusion perpetua to death. When the RTC rendered its decision, the imposition of the death penalty was proscribed by R.A. No. 9346,[30] hence, the maximum allowable penalty was reclusion perpetua, which the RTC imposed in Criminal Case No. 5783-SPL. Under Article 68 (2) of the RPC, appellant is entitled to the privileged mitigating circumstance of minority; thus, the penalty to be imposed shall be the next lower in degree than that prescribed by law, which is reclusion temporal. Applying the ISL, appellant can be sentenced to an indeterminate penalty the minimum of which shall be within the range of prision mayor (the penalty next lower in degree to reclusion temporal), which is 6 years and 1 day to 12 years, and, there being no modifying circumstance, the maximum of which shall be within the range of reclusion temporal in its medium period, which is 14 years, 8 months and 1 day to 17 years and 4 months.

Citing Article 2230 of the Civil Code, appellant contends that the RTC erred in awarding exemplary damages. Appellant argues that because no aggravating circumstance was alleged or proved, there can no be exemplary damages. We are not persuaded.

In *People v. Villanueva, Jr.*,[31] also a case of robbery with homicide, treachery was appreciated as a generic aggravating circumstance to justify the award for exemplary damages because it was proved, although not alleged. Here, the evidence shows that the victim was unarmed and held on the arms and, while in such defenseless condition, appellant suddenly stabbed him on the chest. The victim was therefore no match to his three assailants who took advantage of their superior strength.[32] Thus, although not alleged, abuse of superior strength may be appreciated as a generic aggravating circumstance to justify the award of exemplary damages.

In this regard, in *People v. Veloso*,[33] the Supreme Court had occasion to warn that courts should not lose sight of the very reason why exemplary damages are awarded, which is to “serve as a deterrent to serious wrong doings, and as a vindication of undue sufferings and wanton invasion of the rights of an injured or a punishment for those guilty of outrageous conduct”; further, exemplary damages “are intended in good measure to deter the wrongdoer and others like him from similar conduct in the future.” The Supreme Court ruled:

Being corrective in nature, exemplary damages, therefore, can be awarded, not only in the presence of an aggravating circumstance, but also where the circumstance of the case show the highly reprehensible or outrageous conduct of the offender. In much the same way as Article 2230 prescribes an instance when exemplary damages may be awarded, Article 2229, the main provision, lays down the very basis of the award
x x x (underscoring supplied)

Finally, in conformity with recent jurisprudence, the monetary awards for damages shall earn interest at the legal rate of 6% per annum from date of finality of this decision until fully paid.[34]

WHEREFORE, the appeal is PARTLY GRANTED. The Decision, dated March 18, 2011, of the Regional Trial Court of San Pedro, Laguna, Branch 93, finding accused-appellant Junnel Lihaylihay y Magallanes guilty of the

crime of robbery with violence against or intimidation of persons, in Criminal Case No. 5782-SPL, and robbery with homicide, in Criminal Case No. and 5783-SPL, is **AFFIRMED** with **MODIFICATIONS**, as follows:

1) In Criminal Case No. 5782-SPL, for robbery, accused-appellant is instead sentenced to suffer the penalty of four (4) months of *arresto mayor*, as minimum, to two (2) years and four (4) months, as maximum;

2) In Criminal Case No. 5783-SPL, for robbery with homicide, accused-appellant is instead sentenced to suffer the penalty of twelve (12) years, *prision mayor*, as minimum, to seventeen (17) years and four (4) months, *reclusion temporal*, as maximum;

The portion of the *fallo* of the appealed decision concerning service of sentence in an agricultural camp and other training facilities established, maintained, supervised and controlled by BUCOR shall **STAND**.

3. The total award of damages in both cases shall be subject to interest of 6% per annum from finality of the judgment of conviction until fully paid.

SO ORDERED.

Leagogo, J., Chairperson, and [*]Valenzuela, JJ., concur.

[*] Vice J. Amy C. Lazaro-Javier, who is on leave, per Office Order No. 38-15-RSF dated February 3, 2015.

[1] Penned by Judge Francisco Dizon Pano, Records (Vol. II), pp. 166-170; rollo, pp. 15-19.

[2] Also referred to as Jervy or Jerby Belmil y Rodriguez in some parts of the records of the case.

[3] Also referred to as @ Kaskas in some parts of the records of the case.

[4] Order, dated August 14, 2006, granting the Motion for Leave to Amend Informations (*id.* At 20-21) to include the allegation that appellant is "a child-in-conflict with the law" who "acted with discernment," Records, Vol. II, p. 49; *id.* at 72, 72-B.

[5] Also referred to as Marjorie Joyce Millares Guevarra in some parts of the records of the case.

[6] Order dated June 27, 2006, Records (Vol. II), p. 27.

[7] Pre-Trial Order dated February 27, 2007, Records (Vol. II), p. 67.

[8] Exh. G, Records (Vol. I), p. 13.

[9] Records (Vol. II), p. 141 (Note: the defense did not object to the offer of this evidence.)

[10] Exh. H, Records (Vol. I), p. 12. Official Receipt dated May 19, 2006 evidencing payment for the issuance of Death Certificate (Exh. I-22), Records (Vol. II), 45.

[11] Record of Operation of Reneboy Yaoto Aluning (Exh. F), Records (Vol. II), p. 12; Discharge Summary (Exh. G-1), Records (Vol. I), p. 14.

[12] Receipts and statements of account on the hospital and medical expenses incurred for the confinement of Reneboy Yatoto Aluning at MPI-Medical Center Muntinlupa (Exhs. I, I-1 to I-20), Records (Vol. II), pp. 30-43.

[13] Certification dated May 19, 2006, issued by the City Health Officer, City of Muntinlupa, for the transfer of the remains of Reneboy Aluning, (Exh. I-21), *id.* at 44. Official Receipt dated May 19, 2006, issued by the City

Treasurer, City of Muntinlupa, evidencing payment for the issuance of burial permit (Exh. I-23), id. at 48.

[14] Official Receipt dated May 25, 2006, issued by O. Escudero Funeral Homes evidencing payment of P29,000 for the funeral service of Reneboy Aluning (Exh. I-24), id. at 140.

[15] TSN, June 3, 2008, pp. 3-6; TSN, August 20, 2008, pp. 2-3; TSN, September 29, 2008, p. 3; Sinumpaang Salaysay of Ronald Yaoto Aluning dated May 18, 2006 (Exh. E), Records (Vol. II), p. 9.

[16] TSN, May 11, 2010, pp. 2-5.

[17] Supra note 1.

[18] Records (Vol. II), p. 170; rollo, p. 19.

[19] Appellant filed a Notice of Appeal dated May 25, 2011, Records (Vol. II), p. 171. The RTC Order, dated May 31, 2011, granted the appellant's Notice of Appeal and directed the entire records of the case forwarded to the Court of Appeals for further proceedings, id. at 172.

[20] Rollo, pp. 51-52.

[21] Exh. A (see question 07), Records (Vol. II), p. 5.

[22] People v. Temanel, et al., G.R. Nos. 97138-39, September 28, 2000.

[23] People v. Dela Cruz, G.R. No. 187683, February 11, 2010. (Citation omitted).

[24] People v. Gaviola, G.R. No. 126125, March 9, 2000.

[25] People v. Temanel, et al., supra note 22.

[26] People v. Bulasag, G.R. No. 172869, July 28, 2008. (Citations omitted.)

[27] People v. Temanel, supra note 22.

[28] ART. 68. – Penalty to be imposed upon a person under eighteen years of age. – When the offender is a minor under eighteen years and his case is one coming under the provisions of the paragraph next to the last of Article 80 of this Code, the following rules shall be observed:

xxxx

2. Upon a person over fifteen and under eighteen years of age the penalty next lower than that prescribed by the law shall be imposed, but always in the proper period.

[29] People v. Barreta, G.R. No. 120367, October 16, 2000.

[30] “An Act Prohibiting the Imposition of Death Penalty in the Philippines,” approved June 24, 2006.

[31] G.R. No. 187152, July 22, 2009.

[32] People v. Caoile, 61 SCRA 73, 79.

[33] G.R. No. 188849, February 13, 2013.

[34] People v. Barra, G.R. No. 198020, July 10, 2013, citing People v. Deligero, G.R. No. 189280, April 17, 2013. (Citations omitted.)

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