

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, KURVEAN JOHN SEBASTIAN Y HERNANDEZ, ACCUSED-APPELLANT.

Ponente: BRUSELAS, JR. J.

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BRUSELAS, JR. J.:

Before us for review is a Decision[1] that found the accused-appellant Kurvean John Sebastian y Hernandez (“Sebastian”) guilty beyond reasonable doubt of Robbery with Homicide, the dispositive portion of which reads as follows:

“IN THE LIGHT OF ALL THE FOREGOING, judgment is hereby rendered finding the accused KURVEAN JOHN SEBASTIAN, GUILTY beyond reasonable doubt of the crime of Robbery with Homicide penalized under the Revised Penal Code. Accordingly, said accused is hereby sentenced to suffer the penalty of reclusion perpetua.

Said accused is likewise directed to pay the heirs of the deceased Jojo Zamora the following amounts as follows:

- 1) Php 75,000.00 as civil indemnity for the death Jojo Zamora; and
- 2) Php 50,000.00 as moral damages.

SO ORDERED.”[2]

Accused-appellant Sebastian was charged with the crime of Robbery with Homicide in an Information, the accusatory portion of which reads:

“That on or about the 11th day of August, 2005, in Quezon City, Philippines, the said accused RONALD GONZAGA Y CAPAL and KURVEAN JOHN SEBASTIAN Y HERNANDEZ, a minor, 15 years old, conspiring together, confederating with another group of persons and whose true names and identities have not as yet been ascertained and mutually helping one another, with intent to gain, by means of force, violence and intimidation against person, did, then and there wilfully, unlawfully and feloniously rob one PO1 RICHARD MABAZZA Y SOLMAYOR, in the following manner, to wit: while aforesaid complainant was on board a passenger jitney bearing Plate No. PVU-422, driven and managed at the time by JOEL LAGUA with other passengers on board including the accused, and upon reaching Commonwealth Avenue near Kristong Hari Church, this City, accused armed with firearms and bladed weapons announced a hold-up and thereafter divested passengers PO1 Richard Mazabba [sic] of his One (1) Divers Mens wristwatch worth P 4,500.00 and one (1) NOKIA cellphone 7650 worth P 8,500.00, all in the total amount of P 13,000.00, Philippine Currency and the other passengers of their valuables, to the damage and prejudice of the said offended party; that by reason or in the occasion of the robbery, accused pursuant to their conspiracy, with intent to kill, and taking advantage of superior strength attack, assault and employ personal violence upon one JOJO ZAMORA Y PALCESO, passenger thereat, by then and there firing a gun, hitting said Jojo Zamora on the head, thereby causing him fatal gun shot wounds, which were the direct and immediate cause of his death, to the damage and prejudice of the heirs of said Jojo Zamora y Palceso.

CONTRARY TO LAW.”[3]

During the arraignment, Sebastian pleaded “not guilty” to the felony with which he was charged.[4]

At the pre-trial, the parties stipulated on the following facts:

- “1. The jurisdiction of the Court over the person and subject matter of this case;
2. That accused Ronald Gonzaga and Kurvean John Sebastian are the same persons mentioned in the Information;
3. That accused Kurvean John Sebastian is a minor.”[5]

The prosecution presented the following witnesses: (1) Michelle Zamora, the widow of deceased-victim, Jojo Zamora; (2) Rogelio Canezo (“Canezo”), one of the passengers of the subject Public Utility Jeep (PUJ); (3) PO2 Richard Mabazza (“PO2 Mabazza”), also a passenger of the PUJ; (4) Dr. Shane Lore Detaballe (“Dr. Detaballe”), the Medico Legal Officer who attended to the case; and (5) SPO1 Mario Turiano, the investigating police officer. The defense, on the other hand, presented accused-appellant Sebastian as its sole witness.

According to the prosecution's version of the facts, at around two o'clock in the morning (2:00 a.m.) of August 11, 2005, Canezo and his co-worker, a certain Vicente Regala boarded a PUJ from Paco, Manila headed towards Fairview, Quezon City. The deceased-victim, Jojo Zamora (“Zamora”), was also a passenger of the said PUJ. At the vicinity of the Commission on Audit Office at Commonwealth Avenue, PO2 Richard Mabazza, who was in civilian clothing, hailed the same PUJ and boarded it.

Canezo sat at the extreme end, right side of the PUJ and his companion Regala sat on the extreme left side of the PUJ, opposite the former. PO2 Mabazza, on the other hand, was seated at the extreme inner portion of the PUJ near the driver, while there were other passengers in between Canezo and PO2 Mabazza.

The lighted lamp posts along Commonwealth Avenue gave sufficient illumination in and out of the PUJ.

Shortly after PO2 Mabazza boarded the PUJ and upon reaching the corner of Litex, in front of Prime Funeral along Commonwealth Avenue, six (6) men blocked the subject PUJ, then two (2) men boarded the jeep and announced a hold-up. The two men who boarded the jeep were identified as appellant Sebastian, the one who declared the hold-up, and his co-accused Gonzaga, while the rest of their cohorts positioned themselves inside and outside the PUJ. Sebastian began divesting the passengers of their belongings, which included Canezo's gold plated Seiko watch, and PO2 Mabazza's diver's watch and Nokia 7650. After Sebastian got hold of the passengers' belongings, he then turned them over to his other companions positioned towards the exit of the PUJ.

In the process of divesting the passengers of their belongings, Gonzaga noticed an object bulging inside PO2 Mabazza's waist, Gonzaga immediately pointed his firearm at PO2 Mabazza and pulled the trigger twice but it did not fire. Instinctively, PO2 Mabazza drew his firearm and was able to shoot both Sebastian and Gonzaga. Right after PO2 Mabazza opened fire, one of the malefactors positioned outside the PUJ opened fire towards the passengers and hit passenger Zamora, who was seated near Canezo and PO2 Mabazza.

Thereafter, the other malefactors immediately fled the scene on foot, leaving Sebastian and Gonzaga behind.

PO2 Mabazza immediately ordered the PUJ driver to go straight to the police station to ask for “back-up” and to bring all the wounded persons to the East Avenue Medical Center, where Sebastian and Gonzaga were treated and arrested. At the hospital, Zamora, who was shot by one of Sebastian's cohorts during the robbery, died.

According to Dr. Detaballe, the medico legal officer of the Philippine National Police Crime Laboratory, as per Medico Legal Report No. M-3015-05, issued after an examination was performed on the remains of Zamora, the latter suffered two (2) gunshot wounds on the head, with only one point of entry and one point of exit – which caused the victim's death.

The defense presented a different version of the facts. On August 10, 2005, at around 8:00 o'clock in the evening, Sebastian arrived at Litex Kambingan, Commonwealth Avenue to attend the birthday party of his friend, Bondying. He and Bondying ate and had a drinking spree. At around 11:00 o'clock, p.m. Sebastian saw three (3) male individuals approached Bondying. He was seated around eight (8) meters away from them. The trio went home ahead of Sebastian who also decided to go home after a few minutes. Bondying accompanied Sebastian to the jeepney station or "sakayan." As the jeepney in line at that time was already full, Sebastian ordered Bondying to just go home and not wait for him to board.

Sebastian remembered being the 8[th] passenger to board the jeepney. Suddenly, a group of three (3) male individuals boarded and declared a "hold-up." The three (3) ordered the driver to drive fast and they divested the passengers of their belongings. The robbers alighted somewhere in Commonwealth Avenue, Quezon City. Sebastian then panicked, stood up, and was shot at the back. He woke up in handcuffs at the hospital. A woman came over, accusing him of killing her husband.

He was later charged with Robbery with Homicide.

While on trial, the other accused, Gonzaga, died of cardiogenic shock secondary to dilated cardiomyopathy secondary to methamphetamine use.[6] The case against him was consequently dismissed by the court a quo.[7]

After the trial, the court a quo rendered the assailed decision finding Sebastian guilty beyond reasonable doubt of the crime of Robbery with Homicide. Because Sebastian was a minor at the time of the incident, he was accorded the privileged mitigating circumstance of minority with the trial court reducing his penalty to reclusion perpetua. No award for actual damages was granted because of the failure of the prosecution to offer the official receipts of expenses incurred relative to the hospitalization and death of Zamora.

Hence, this appeal.

Sebastian seeks his acquittal by raising the following assignment of errors:

"I.

THE COURT A QUO GRAVELY ERRED WHEN IT FAILED TO CONSIDER THE INHERENT INCONSISTENCIES BETWEEN THE TESTIMONIES OF PO2 MABAZZA AND ROGELIO CANEZO IN CONVICTING ACCUSED-APPELLANT;

II.

ASSUMING ACCUSED-APPELLANT IS GUILTY OF ROBBERY WITH HOMICIDE, THE COURT A QUO GRAVELY ERRED WHEN IT MISAPPLIED THE PRIVILEGED MITIGATING CIRCUMSTANCE OF MINORITY IN IMPOSING THE PROPER PENALTY; and

III.

THE COURT A QUO GRAVELY ERRED IN PRONOUNCING THE CONVICTION OF ACCUSED-APPELLANT."

We fail to find merit in the appeal.

The appeal mainly hinges on the issue of whether the evidence on record is sufficient to hold appellant guilty beyond reasonable doubt of the crime of robbery with homicide under Article 294 (1) of the Revised Penal Code.

"Art. 294. Robbery with violence against or intimidation of persons – Penalties.- Any person guilty of robbery with the use of violence against or intimidation of any person shall suffer:

1. The penalty of, from reclusion perpetua to death, when by reason or on occasion of the robbery, the crime of homicide shall have been committed; or when the robbery shall have been accompanied by rape or intentional mutilation or arson.

xxx xxx xxx”

Robbery with homicide is principally a crime against property and not against persons. Homicide is a mere incident of the robbery, the latter being the main purpose and object of the criminal.[8]

For an accused to be convicted of the crime of robbery with homicide, the prosecution is burdened to prove the confluence of the following elements:

"(1)

the taking of personal property is committed with violence or intimidation against persons;

(2)

the property taken belongs to another;

(3)

the taking is animo lucrandi; and

(4)

by reason of the robbery or on the occasion thereof, homicide is committed.”[9]

Sebastian points to the alleged conflicting, irreconcilable testimonies of PO2 Mabazza and Canezo, more particularly on factual matters such as: (1) the exact number of robbers or malefactors involved in hailing the subject PUJ, including appellant and Gonzaga; (2) conflict as to the exact number of robbers hit by PO2 Mabazza; (3) doubt with respect to the identity of the bullet that hit Sebastian; and (4) the positions of the other malefactors inside and outside the PUJ at the time of the robbery. According to the appellant, these inconsistencies should have adversely affected the credibility of prosecution witnesses PO2 Mabazza and Canezo; thus, creating reasonable doubt as to his complicity in the crime charged.

Well-settled is the rule that generally, the factual findings-- including its assessment of the credibility of the witnesses, the probative weight of their testimonies, and the conclusions drawn from the factual findings - are accorded great respect and even conclusive effect.[10] The factual findings of the trial court will not be disturbed since it is in a better position to appreciate the conflicting testimonies of the witnesses, having observed their deportment and manner of testifying.

The issue raised by Sebastian involves the credibility of the prosecution witnesses, which is best addressed by the trial court, it being in a better position to decide such question, having heard the witnesses and observed their demeanor, conduct, and attitude under grueling examination. These are the most significant factors in evaluating the sincerity of witnesses and in unearthing the truth, especially in the face of conflicting testimonies. Through its observations during the entire proceedings, the trial court can be expected to determine, with reasonable discretion, whose testimony to accept and which witness to believe. Verily, findings of the trial court on such matters will not be disturbed on appeal unless some facts or circumstances of weight have been overlooked, misapprehended or misinterpreted so as to materially affect the disposition of the case.[11]

Contrary to Sebastian's arguments, Canezo's account of the incident was corroborated by that of PO2 Mabazza's testimony on material points. We find that the alleged disparity in their testimony concerns only a trivial matter,

which may be attributed to the different vantage points from which the witnesses observed the event. It pertains to a minute detail, and should not affect the truthfulness of the account by the eyewitnesses. Not all inconsistencies of a witness would render his testimony unworthy of credence. Inconsistencies on minor details reinforce rather than weaken credibility.[12]

In the present case, what is material is that both PO2 Mabazza and Canezo, both eyewitnesses to the crime, positively identified appellant Sebastian as one of the individuals who participated in the robbery and the eventual killing of Zamora during the robbery. The testimonies of both prosecution witnesses described specifically the role that Sebastian played, together with his other conspirators, in the commission of the crime. The prosecution's evidence clearly established the identities of both Sebastian and Gonzaga; that they were the very same persons who took their valuables; and that one of the robbers fired a gun towards the PUJ, which caused the death of passenger Zamora.

To be more specific, the testimonies of PO2 Mabazza and Canezo coincided in that the number of malefactors involved in the commission of the crime was six (6) men.[13] As to the alleged conflict in the testimonies of the two witnesses regarding the exact number of robbers hit by PO2 Mabazza, we agree with the prosecution's observations that while PO2 Mabazza testified that he was able to hit both Sebastian and Gonzaga; and that Canezo testified that only Gonzaga was shot by PO2 Mabazza, the seemingly inconsistent statements were clarified by Sebastian's own admission that he was shot, while inside the PUJ, by a man seated in the inner part of the vehicle near the driver who was later established to be PO2 Mabazza.[14] The foregoing admission of Sebastian that he was shot by a man seated in the inner portion of the PUJ who can be no other than PO2 Mabazza renders moot the purported failure of the prosecution to establish the identity of the bullet that hit him. Lastly, we find that the alleged disparity in the testimonies of both PO2 Mabazza and Canezo on the actual positions of the other co-conspirators of Sebastian and Gonzaga during the robbery to be minor inconsistencies which should not affect the credibility of the witnesses, such matters being non- elements of the crime of robbery with homicide.

We therefore find no cogent reasons for us to depart from the findings of the court a quo that it was Sebastian, together with his cohorts, who conspired to take the valuables of the passengers of the PUJ and from which occasion of robbery arose the gun-shot wound and eventual death of Zamora.

The rule is well-established that whenever homicide has been committed as a consequence of or on the occasion of the robbery, all those who took part as principals in the robbery will also be held guilty as principals of the special complex crime of robbery with homicide although they did not actually take part in the homicide, unless it clearly appears that they endeavored to prevent the homicide.[15] In the case at hand, it has not been shown that Sebastian tried to prevent the shooting of Zamora by one of his cohorts to prevent Zamora's eventual demise.

Sebastian relied heavily on denial to prove his innocence. Denial like alibi is a weak defense, and must be rejected when the identity of the accused is sufficiently and positively established by eyewitnesses to the offense. Given the positive identification of accused-appellant as the perpetrator of the crime, his denial or alibi cannot prevail.[16] Denial is an intrinsically weak defense which must be buttressed with strong evidence of non-culpability to merit credibility.[17] In the case under review, the positive identification of the appellant as the perpetrator of the crime, absent any showing of ill motive on the part of the prosecution's witnesses, must prevail over the appellant's lame and obviously fabricated defenses of denial and alibi.

Anent the issue of appellant's minority, Sebastian was established to be fifteen (15) years of age at the time of the commission of the offense; thus, although the felonious acts in this case were committed before Republic Act No. 9344 took effect on May 20, 2006, the said law would still be applicable given that Section 68 thereof expressly states:

“SEC. 68. Children Who Have Been Convicted and are Serving Sentences. -- Persons who have been convicted and are serving sentence at the time of the effectivity of this Act, and who were below the age of eighteen (18) years at the time of the commission of the offense for which they were convicted and are serving sentence, shall likewise benefit from the retroactive application of this Act. They shall be entitled to appropriate dispositions provided under this Act and their sentences shall be adjusted accordingly. They shall be immediately released if they are so qualified under this Act or other applicable law.” (emphasis ours)

The court a quo correctly appreciated in favor of the appellant the circumstance of his minority; thus, his supposed entitlement to a suspension of sentence under Section 38 of Republic Act No. 9344, which reads:

“SEC. 38. Automatic Suspension of Sentence. -- Once the child who is under eighteen (18) years of age at the time of the commission of the offense is found guilty of the offense charged, the court shall determine and ascertain any civil liability which may have resulted from the offense committed. However, instead of pronouncing the judgment of conviction, the court shall place the child in conflict with the law under suspended sentence, without need of application. Provided, however, That suspension of sentence shall still be supplied even if the juvenile is already eighteen years (18) of age or more at the time of the pronouncement of his/her guilt.

Upon suspension of sentence and after considering the various circumstances of the child, the court shall impose the appropriate disposition measures as provided in the Supreme Court Rule on Juvenile in Conflict with the Law.”

The court a quo correctly ruled that the suspension of sentence, however, may no longer be applied in the instant case given that the appellant was about twenty (22) years of age at the time of the court a quo's promulgation of judgment. Section 40 of Republic Act No. 9344 puts a limit to the application of a suspended sentence, namely, when the child reaches a maximum age of 21. The said provision states:

“SEC. 40. Return of the Child in Conflict with the Law to Court. -- If the court finds that the objective of the disposition measures imposed upon the child in conflict with the law have not been fulfilled, or if the child in conflict with the law has willfully failed to comply with the conditions of his/her disposition or rehabilitation program, the child in conflict with the law shall be brought before the court for execution of judgment.

If said child in conflict with the law has reached eighteen (18) years of age while under suspended sentence, the court shall determine whether to discharge the child in accordance with this Act, to order execution of sentence, or to extend the suspended sentence for a certain specified period or until the child reaches the maximum age of twenty-one (21) years.” (Emphasis ours.)

Nevertheless, the appellant shall be entitled to appropriate disposition under Section 51 of RA No. 9344,[18] which provides for the confinement of convicted children as follows:

“SEC. 51. Confinement of Convicted Children in Agricultural Camps and other Training Facilities. - A child in conflict with the law may, after conviction and upon order of the court, be made to serve his/her sentence, in lieu of confinement in a regular penal institution, in an agricultural camp and other training facilities that may be established, maintained, supervised and controlled by the BUCOR, in coordination with the DSWD.”

A reasonable ground exists in this case, however, that calls for the modification of the penalty of reclusion perpetua imposed by the court a quo upon the appellant. Applying the privileged mitigating circumstance, the proper imposable penalty upon appellant should be reclusion temporal, being the penalty next lower to reclusion perpetua to death- which is the penalty prescribed by law for robbery with homicide. Necessarily, also applying the Indeterminate Sentence Law (ISLAW), the minimum penalty should be taken from the penalty next lower in degree which is prision mayor, and the maximum penalty shall be taken from the medium period of reclusion temporal, there being no other mitigating circumstance nor aggravating circumstance. The ISLAW is applicable in

the present case because the penalty which has been originally an indivisible penalty (reclusion perpetua to death), where ISLAW is inapplicable, became a divisible penalty (reclusion temporal) by virtue of the presence of the privileged mitigating circumstance of minority.[19] Therefore, a penalty of six (6) years and one (1) day of prision mayor, as minimum, and fourteen (14) years, eight (8) months and one (1) day of reclusion temporal, as maximum, should be the proper imposable penalty.

The court a quo correctly awarded civil indemnity in the amount of P75,000.00, the current amount of civil indemnity awarded in cases of murder. Robbery with homicide belongs to that class of felony denominated as “Robbery with violence against or intimidation of persons” under Article 294 of the Revised Penal Code and the killing or death of a person is committed “by reason or on occasion of the robbery.” The increase in the amount of civil indemnity from P 50,000.00 to P 75,000.00 is called for as the special complex crime of robbery with homicide, like murder, involves a greater degree of criminal propensity than homicide alone where the civil indemnity awarded is P50,000.00.[20]

The P50,000.00 imposed as moral damages, on the other hand, is likewise proper and conforms to recent jurisprudence.[21]

In addition, and in conformity with current policy, we also impose on all the monetary awards for damages (namely, the civil indemnity and moral damages) interest at the legal rate of 6% per annum from date of finality of the decision until fully paid.[22]

WHEREFORE, the appeal is DISMISSED. The assailed decision is AFFIRMED with the following MODIFICATIONS: (1) the penalty of reclusion perpetua imposed against the appellant is reduced to six (6) years and one (1) day of prision mayor, as minimum, and fourteen (14) years, eight (8) months and one (1) day of reclusion temporal, as maximum; and (2) legal interest at the rate of 6% per annum is imposed on the civil indemnity and moral damages awarded to the heirs of the victim, which shall commence from the date of finality of the decision until fully paid.

IT IS SO ORDERED.

Salazar-Fernando (Chairperson) and Barrios,[*] JJ., concur.

[*]Actg. Third Member vice J. Gaerlan per Office Order No. 270-14-RSF dated 06 June 2014.

[1] Written by Presiding Judge Ma. Lourdes A. Giron, Branch 102 of the Regional Trial Court of Quezon City in Criminal Case No. Q-05-136228 dated 09 May 2012. Records, pp. 280-290.

[2] Records, p. 290.

[3] Ibid, pp. 2-3.

[4] Records, p. 32.

[5]Ibid, p. 66.

[6] Records, p. 150.

[7] Ibid, p. 150-A.

[8] People v. Hernandez, G.R. No. 139697, June 15, 2004, 432 SCRA 104.

[9] People v. Diu, G.R. No. 201449, April 3, 2013, 695 SCRA 229, citing People v. De Jesus, G.R. No. 134815,

May 27, 2004, 429 SCRA 384.; People v. Maxion, G.R. No. 135145, July 19, 2001, 361 SCRA 414; People v. Sabadao, G.R. No. 126126, October 30, 2000, 344 SCRA 432.

[10] People v. Diu, supra at footnote 9.

[11] People v. Diu, citing People v. Maxion, supra at footnote 9.

[12] People v. Tupal, G.R. Nos. 137982-85, January 13, 2003, 395 SCRA 72, citing People v. Emoy, G.R. No. 109760, September 27, 2000, 341 SCRA 178.

[13] TSN dated September 13, 2006. p. 4 and TSN dated September 12, 2007, p. 4.

[14] TSN dated December 9, 2009, p. 8.

[15] People v. Sabadao, supra at footnote 9.

[16] People v. Maxion, supra at footnote 9.

[17] People v. Bulasag, G.R. No. 172869, July 28, 2008, 560 SCRA 245.

[18] People v. Monticalvo, G.R. No. 193507, January 30, 2013; People v. Allen Udtojan Mantalaba, G.R. No. 186227, July 20, 2011, 654 SCRA 715; People v. Jacinto, G.R. No. 182239, March 16, 2011, 645 SCRA 590.

[19] People v. Allen Udtojan Mantalaba, supra at footnote 18.

[20] People v. Aleman, G.R. No. 181539, July 24, 2013, 702 SCRA 118.

[21] Ibid.

[22] People v. Aleman, supra at footnote 20.

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