

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JUANITO BALANGUE AND JUMEL BALANGUE, ACCUSED-APPELLANTS.

Ponente: CRUZ, J.

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CRUZ, J.:

THE CASE

This is an appeal interposed by Juanito and Jumel Balangue from the Decision dated July 30, 2008[1] by the Regional Trial Court ("RTC") of Cauayan City, Isabela, Branch 20 in Criminal Case No. 20-1528 and the Order dated November 12, 2008[2] denying reconsideration thereof. The dispositive portion of the decision reads, as follows:

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"WHEREFORE, judgment is rendered finding the accused Juanito Balangue and Jumel Balangue guilty beyond reasonable doubt of the crime of Robbery, as defined and penalized under paragraph 5 of Article 294 of the Revised Penal Code and sentencing them to suffer the Indeterminate Sentence of Four (4) years Two (2) months of Prison Correccional as minimum to Eight (8) years and Twenty (20) days of Prison Mayor, as maximum and ordering them to pay for or restitute, jointly and severally, with the corresponding legal interests computed from the time the National Food Authority and the complaining witnesses were deprived of cash, articles of value and other personal belongings, as follows:

- Cash belonging to the National Food Authority- P673,628,84.

- Personal Cash belonging to:

Milagros A. Hechorres- P25,000.00

Elvira T. Ocampo-P27,000.00

Felicidad R. Tiangson-P1,700.00

- Other articles of value such as five (5) calculators, four (4) bags, eyeglasses, bank books, farmers' passbook, checks issued by the National Food Authority, National Food Authority warehouse documents, National Food Authority Official Receipts (ORs), other personal effects and/or to pay their equivalent value.

For failure of the prosecution to prove the guilt of accused PEDRO MOLINA beyond reasonable doubt, he is hereby ACQUITTED.

Costs of suit to be paid by accused Juanito Balangue and Jumel Balangue.

SO ORDERED."

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THE ANTECEDENTS

Vic Baguiwan alias "Vic Baguioan", Gregorio Parungao alias "Jun" or "Ignas", Pedro Molina, Juanito Balangue, Jumel Balangue, were charged before the RTC with the crime of robbery in band defined and penalized under paragraph 5, Article 294[3] in relation to Article 296[4] of the Revised Penal Code, as amended by RA 7659[5] under the following information:

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"That on or about the 20[th] day of November 2000, in the Municipality of San Mateo, Province of Isabela, Philippines, and within the jurisdiction of this Honorable Court, the said accused, conspiring, confederating together and helping one another, all armed with short firearms, with intent to gain and by means of force and intimidation against person, to wit: by poking their firearms towards the persons of Milagros A. Hechorres, Elvira Ocampo, Felicidad Tiangson, Toribia Elvie Bianzon and Florante Fortunato and at gun point take, steal and bring away from them cash money in the total amount of P729,178.84 belonging to the National Food Authority and the said Milagros A. Hechorres, Elvira T. Ocampo, Felicidad Tiangson and Toribia Elvie Bianzon, all against their will and consent, to the damage and prejudice of the National Food Authority and the said Milagros A. Hechorres, Elvira T. Ocampo, Felicidad R. Tiangson and Toribia Elvie H. Bianzon in the aforesaid total amount of P729,178.84.

CONTRARY TO LAW."[6]

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When arraigned in Criminal Case No. 20-1528, Pedro Molina[7], Juanito Balangue[8] and Jumel Balangue pleaded "not guilty" to the crime charged. Accused Vic Baguiwan alias "Vic Baguioan", Gregorio Parungao alias "Jun" or "Ignas" remained at large. Thereafter, pre-trial was held and consequently terminated[9], and trial of the case ensued.

From the evidence adduced by the prosecution, it appears that on November 20, 2000, at about 11:20 a.m. the employees of the National Food Authority ("NFA"), namely: Toribia Evie Bianzon, Felicidad R. Tiangson, Elvira T. Ocampo and Milagros Hechorres boarded the NFA service vehicle with plate number SBL-292 driven by Florante Fortunato. On that day, they were scheduled to go to the field offices of the NFA to pay the procured palay. Witnesses Milagros Hechores[10], Elvira T. Ocampo[11], Toribia Evie Bianzon[12], Felicidad R. Tiangson[13] consistently narrated that while the service vehicle was traversing the national highway at Barangay Villa Magat, San Mateo, Isabela, a red pickup overtook the vehicle. They noticed that a Honda motorcycle, with three men on board, was tailing them. Immediately thereafter, the motorcycle went to the left side of the service vehicle and one of the riders ordered the driver to pull over. The latter, sensing a hold-up, refused to pull over and accelerated the service vehicle instead. The motorcycle chased them and the back riders pointed their short firearms at them and the second back rider shouted "Putang-ina ninyo kung ayaw nyong itigil babarilin ko kayo!" Fearing for their lives, the lady employees of the NFA panicked and screamed. This prompted the driver to slow down and stop the service vehicle. The motorcycle maneuvered to the left side of the service vehicle and the two armed back riders alighted. The third rider of the motorcycle collared the driver of the service vehicle and got the key. The second rider of the motorcycle ordered the lady employees to step down from the service vehicle. While poking his firearm at the lady employees, he ordered them to bring out their bags and money. The armed men took their bags which contained cash, personal belongings and other valuables. In the meantime, the driver of the motorcycle who was wearing a helmet turned around and repositioned the motorcycle towards the south. The two armed back riders then boarded the motorcycle and left the premises together with the stolen items.

Thereafter, the victims Milagros Hechores, Elvira T. Ocampo, Toribia Evie Bianzon, Felicidad R. Tiangson and

Florante Fortunato proceeded to the Philippine National Police ("PNP") San Mateo, Isabela to report the incident. It was recorded in the police blotter. On November 24, 2000, Milagros Hechores, Elvira T. Ocampo, Toribia Evie Bianzon, Felicidad R. Tiangson executed their affidavits[14] while Florante Fortunato gave his sworn statement of the incident on November 27, 2000.[15] They also went to the National Bureau of Investigation ("NBI") Ilagan, Isabela on November 28, 2000 where they provided the descriptions of the malefactors to the artist who prepared the cartographic sketch[16]. Prior to December 6, 2008, the witnesses were invited by PNP San Mateo to identify the perpetrators in a police line-up[17]. Toribia Evie Bianzon, Felicidad R. Tiangson and Florante Fortunato executed an Affidavit on December 6, 2000 attesting to the identification of Jumel Balangue and Juanito Balangue as culprits of the robbery incident[18].

Witnesses Milagros Hechores[19], Elvira T. Ocampo[20], Toribia Evie Bianzon[21], Felicidad R. Tiangson[22] positively identified in open court Jumel Balangue and Juanito Balangue as the driver of the motorcycle and the second armed rider respectively who divested them of cash, personal belongings and other valuables on November 20, 2000 at Barangay Villa Magat, San Mateo Isabela. They also identified Pedro Molina as an employee of NFA.

The prosecution also presented witness P/Chief Inspector Archibald Guzman Afan who identified his Affidavit dated December 7, 2000[23] where he stated that their special investigation in connection with the robbery incident dated November 20, 2000 revealed the involvement of NFA employee Pedro Molina.

On the other hand, the defense presented Jumel Balangue, Juanito Balangue, Adelino Fulong and Mario Bautista who had a different version of events.

Jumel Balangue identified his Affidavit dated January 16, 2006[24], where he stated that from October 31, 2000, he and Juanito Balangue were at the residence of Colonel Francisco Arada at 3306 Almazan St., Makati City undertaking construction work. He stayed there until December 5, 2000. His father only went back to Isabela on December 8, 2000.

On December 7, 2000, he was invited by the PNP San Mateo Isabela to go to the police station. When they arrived at the police station he was taken to the 2nd floor office. He claims that his hands were tied behind him and the police placed a rice sack over his head. He was coerced to confess to the crime of robbery. He also observed that on December 8, 2000, their pictures were taken by an unidentified man. He rationalized that it must have been copied by the cartographic artist.

His story was corroborated by Juanito Balangue in his Affidavit dated January 16, 2000[25].

Adelino Fulong, a neighbor of Juanito Balangue and Jumel Balangue at Buenavista, Santiago City Isabela testified that he was requested by Juanito Balangue and Jumel Balangue to watch over their house while they were away for carpentry works[26]. He stated that the two left on October 31, 2000 for Manila and that Jumel Balangue only came back on December 5, 2000[27].

Mario Bautista, a co-worker of Juanito Balangue and Jumel Balangue testified that he knew for a fact that the two were at the residence of Colonel Francisco Arada from October 31, 2000 because they were working on a construction project[28]. He added that Jumel Balangue only left for Santiago City on December 5, 2000.[29]

After the trial, the RTC rendered the assailed decision. Accused Juanito Balangue and Jumel Balangue filed a Motion for Reconsideration[30] which was subsequently denied in an Order dated November 12, 2008[31]. On December 23, 2008, the Accused Juanito Balangue and Jumel Balangue filed their notice of appeal[32], where they raised the following as errors:

THE ASSIGNED ERRORS

I.

THE RTC GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANTS DESPITE THE PROSECUTION'S FAILURE TO COMPLETELY PROVE THEIR IDENTITY AS THE PERPETRATORS OF THE CRIME CHARGED;

II.

THE RTC GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANTS DESPITE THE PROSECUTION'S FAILURE TO PROVE THEIR GUILT BEYOND REASONABLE DOUBT.

The accused, now the appellants before us, argue that in every criminal prosecution, it is essential that the commission of the crime and the identification of the accused as the perpetrator be established. Here, the quantum of evidence required by law to justify a conviction was not duly established as the identities of the perpetrators for the crime charged were left in quandary. The testimonies of the prosecution witnesses were also unreliable. Witness Toribia Bianzon admitted having difficulty describing the appearance of the culprits. She said she didn't notice one of the malefactor's face as the incident happened so fast. Moreover, Elvira Ocampo, merely relied on her memory when she identified the perpetrators. It is worthy to stress that the identification of accused during the police line-up was conducted 2 weeks after the incident. It is very likely that the prosecution witnesses may have failed to accurately recall the identities of the perpetrators. It is even doubtful that they were able to identify the driver of the motorcycle as he was wearing a helmet. All told, the inherent lack of credibility of the prosecution's witnesses and the failure to completely prove the elements of the crime charged negate the sufficiency of evidence which would warrant the acquittal of Juanito Balangue and Jumel Balangue.

On the other hand, the Office of the Solicitor General ("OSG") contends that to be convicted of robbery under Article 293 of the Revised Penal Code, the following elements must concur: (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 characterized by intent to gain or animus lucrandi. Here, the prosecution sufficiently established that the accused-appellants took the cash and personal effects of the victims by means of violence and intimidation. The accused-appellants were armed when they stopped the service vehicle. At gunpoint, they divested the victims of cash and personal belongings. Animus lucrandi` is presumed from the unlawful taking of things. Thus, the elements of the crime were sufficiently proven. The OSG counters that Toribia Bianzon positively identified Jumel Balangue as the driver of the motorcycle. The testimony of Elvira Ocampo deserves credence because the incident happened at daytime and that the victim was in close proximity to the accused-appellants during the commission of the robbery. It is highly unlikely that the prosecution witnesses would not be able to see the face of the culprits. It is a settled rule that when conditions of visibility are favorable and the witnesses do not appear to be biased as in the instant case their assertion as to the identity of the malefactors should be normally accepted. The credibility of the witness cannot be doubted even if 2 weeks have already passed from the time of the incident because the most natural reaction of a witness to a crime is to strive to look at the appearance of the perpetrator and to observe the manner in which the offense is perpetrated. Furthermore, the determination of the credibility of the witnesses by the RTC is conclusive and binding unless shown to be tainted with arbitrariness or unless through oversight some fact or circumstance of weight and influence has not been considered. In this case, there is no showing that the RTC overlooked, misunderstood or misapplied some facts or circumstance of weight. Between the categorical statement of the prosecution witnesses on the one hand, and the bare denials and alibi of the accused-appellants, on the other, the former must perforce prevail.

OUR RULING

The appeal is without merit.

Paragraph 5, Article 294 of the Revised Penal Code under which the accused-appellants were charged states:

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"Art. 295. 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:

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5. The penalty of prision correccional in its maximum period to prision mayor in its medium period in other cases. (As amended by R. A. 18). "

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In relation to which, Article 293 of the Revised Penal Code states,

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"Art. 293. Who are guilty of robbery. — Any person who, with intent to gain, shall take any personal property belonging to another, by means of violence or intimidation of any person, or using force upon anything shall be guilty of robbery."

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Simple robbery is committed by means of violence against or intimidation of persons. *Pedro Consulta vs.*, People of the Philippines[33], identified the elements of robbery as defined in Article 293 of the RPC as: a) that there is personal property belonging to another; b) that there is unlawful taking of that property; c) that the taking is with intent to gain; and d) that there is violence against or intimidation of persons or force upon things.

Indeed, the prosecution adequately established the above elements.

First, it was duly established that the subject of the robbery were personal properties, to wit: cash in the total amount of P729,128.84, Philippine Currency; personal effects and other valuables owned either by NFA or by the victims as evident from the Joint Affidavit dated November 27, 2000[34] of Felicidad R. Tiangson, Elvira T. Ocampo and Milagros Hechorres.

Second, there is unlawful taking of personal properties as established by the following testimonies:

Testimony of Milagros Hechorres:

"Q:

After you stopped, what happened , if any?

A:

The two came who were riding on the motorcycle alighted and told baba, baba, baba and took our bags, our belongings, sir.

Q:

After the two alighted what did the culprits do?

A:

They boarded on the motorcycle and left us, sir." [35]

Testimony of Elvira T. Ocampo:

"Q:

What did the two persons do when they alighted from their motorcycle?

A:

They took our bags sir and the other person went near the driver.

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Q:

How many bags were taken.

A:

Many, your honor." [36]

Testimony of Toribia Evie Bianzon:

"Q:

Where did the two passengers who alighted go?

A:

The third passenger who was sitting behind went near our driver and got the key and the other one approached us and told us " bag ninyo, pera ninyo" and he took our bags." [37]

Testimony of Felicidad R. Tiangson:

"Q:

Where did they go, these two persons?

A:

The other person went to the other side and took our belongings, sir." [38]

In robbery, there must be an unlawful taking or apoderamiento. People of the Philippines vs. Lito Hernandez[39], defines apoderamiento as "the taking of items without the consent of the owner, or by means of violence against or intimidation of persons, or by using force upon things." Taking is considered complete from the moment the offender gains possession of the thing, even if he has no opportunity to dispose of the same.[40] There is, likewise, no need to prove the exact amount of money taken, as long as there is proof of the unlawful taking.[41]

Here, it was adequately proven that accused-appellants divested the prosecution witnesses of personal properties in the course of the robbery. They took possession of their bags containing cash, personal effects and other valuables. At that point, there was already "taking." To constitute robbery, the taking should be accompanied by intent to gain. As held in People of the Philippines vs. Edgar Evangelio, et., al.[42], "Intent to gain, or animus lucrandi, as an element of the crime of robbery, is an internal act; hence, presumed from the unlawful taking of things". Actual gain is irrelevant as the important consideration is the intent to gain. Having established that personal properties were unlawfully taken by the accused-appellants from Toribia Evie Bianzon, Felicidad R.

Tiangson, Elvira T. Ocampo and Milagros Hechorres and Florante Fortunato for their personal benefit, intent to gain was likewise proven.

Third, the prosecution has established the element of intimidation. Intimidation was used to order to obtain possession of the personal properties belonging to the NFA and its employees.

Intimidation is defined in Black's Law Dictionary as unlawful coercion; extortion; duress; putting in fear. In robbery with intimidation of persons, the intimidation consists in causing or creating fear in the mind of a person or in bringing in a sense of mental distress in view of a risk or evil that may be impending, real or imagined.[43] Such fear of injury to person or property must continue to operate in the mind of the victim at the time of the delivery of the money or valuables. In her narration of the robbery incident, Milagros Hechorres stated that when their driver accelerated the service vehicle, the two back riders brought out and cocked their guns.[44] She likewise stated that the two riders poked their guns at her which she described as a short firearm.[45] Elvira T. Ocampo[46] and Toribia Evie Bianzon[47] recalled that when their driver refused to stop the service vehicle and sped away, accused-appellant Juanito Balangue uttered, "Putang-ina ninyo kung ayaw ninyong itigil babarilin ko kayo" which is obviously a real threat against their lives as they were pointing their firearms at them.

These actuations engendered fear of injury among the NFA employees as they were already screaming at their driver to stop the vehicle as ordered by the accused-appellants.

Accused-appellants attempt to disparage the credibility of witness Toribia Evie Bianzon and Elvira T. Ocampo stating that they have difficulty remembering the description of the perpetrators. The firm, candid and unmistakable declaration of the prosecution witnesses that it was Jumel Balangue and Juanito Balangue whom they saw on the faithful day when the robbery incident took place was unerring and rang with truth. A testimony is credible if it bears the earmarks of truth and sincerity and has been delivered in a spontaneous, natural, and straightforward manner.[48] The credible and forthright narrations of the prosecution witnesses debase the already weak denials of the accused-appellants.

The defenses of alibi and denial are discredited because of the positive identification of the accused-appellants by credible witnesses who were present at the crime scene. Accused-appellants' denial and alibi are not worthy of belief. It is an oft-quoted doctrine that positive identification prevails over denial and alibi.[49] Alibi cannot prevail over the positive identification of the accused-appellants as the perpetrators of the crime. We stress that there is no reason to doubt the credibility of the testimony of the prosecution witnesses because the incident happened during the day and the witnesses had close contact with the perpetrators.

The prosecution witnesses clearly and convincingly identified the accused-appellants as the perpetrators of the robbery incident, to wit:

Testimony of Milagros Hechorres:

"Q:

Mrs. Witness in the hold-up did you see the culprits?

A:

Yes, sir.

Q: Can you now identify if they are here?

COURT INTERPRETER:

Witness pointing to a person who when asked his name identified himself as Jumel Balangue.

Q: Any other culprits, if he is here?

COURT INTERPRETER:

Witness pointing to a person who when asked his name identified himself as Juanito Balangue."[50]

Testimony of Elvira T. Ocampo:

"Q:

And did you see the robbers who took your bags?

A:

Yes, sir.

Q: Can you identify if ever you see them again?

A: Yes sir.

Q: Can you identify them if they are here in court?

A: Yes sir.

Q: Will you please identify them.

COURT: Step down and tap their shoulders.

WITNESS: This one sir, (Witness tapped the shoulder of a person seated on the second row of benches of the court and when asked his name he identified himself as Jumel Balangue.)

Q: And who else?

A: This one sir. (Witness tapped the shoulder of a person seated on the fourth row of benches of the court and when asked his name he answered Juanito Balangue.)"[51]

Testimony of Toribia Evie Bianzon:

"Q:

You said the two of them you can still recall their faces up to now. If you will see them again will you be able to identify them?

A:

Yes, sir.

Q:

Will you tell this Honorable Court if they are in court and can you identify them if you are told to do so?

A:

Yes sir.

Q:

Will you please point at them?

A:

There sir.

COURT: Step down and tap their shoulders.

WITNESS: This one sir. (Witness tapped the shoulder of a person seated on the fourth row of benches of the court and when asked his name he stood up and identified himself as Jumel Balangue.)

Q:

How about the other accused will you point at him?

A:

This one sir. (Witness tapped the shoulder of a person seated on the third row of benches of the court and when asked his name he answered Juanito Balangue.)"[52]

Testimony of Felicidad R. Tiangson:

"Q:

Will you please stand up and identify that person who took your bag?

COURT:

All right you get down the witness stand and tap the shoulder of that person.

(Witness went down the witness stand and went to the benches of the courtroom and tapped the shoulder of a person who when asked his name answered "Juanito Balangue".)

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Q:

How about the driver, did you see him on that occasion?

A:

Yes, sir.

Q:

If you see him, can you identify him?

A:

Yes sir.

Q:

Can you step down and pinpoint to that person if he is here?

COURT: Step down and tap the shoulder of that person.

(Witness tapped the shoulder of a person who is seated in the courtroom who answered that he is Jumel Balangue)"[53]

Alibi, as has been repeatedly held[54], is the weakest defense and cannot prevail over the positive identification of the accused by prosecution witnesses. In the face of the positive identification of accused-appellants by their very victims as the perpetrators of the crime charged, the defense of alibi must fall. Although the alibi of Jumel and Juanito Balangue appears to have been corroborated by his neighbor and co-worker, said defense is unworthy of belief not only because they were positively identified by the victims of the robbery but also because it has been held[55] that alibi becomes more unworthy of merit where it is established mainly by the accused himself and his relatives and by the same token if it is established by his friends and not by credible persons.

What further fortifies the credibility of prosecution witnesses is that accused-appellants have not shown that the prosecution witnesses had any ulterior motive in testifying against them. Absent evidence showing any reason or motive for prosecution witnesses to perjure, the logical conclusion is that no such improper motive exists, and their testimony is thus worthy of full faith and credit.

We further hold that there is no procedural obstacle to the conviction of accused-appellants of the crime of simple robbery upon an information charging them with robbery in band, since the former offense which has been proved is necessarily included in the latter offense with which they are charged. For the former offense, it is sufficient that the elements of unlawful taking, with intent to gain, of personal property through intimidation of the owner or possessor thereof shall be, as it has been, proved in the present case. Intent to gain (*animus lucrandi*) is presumed to be alleged in an information where it is charged that there was unlawful taking (*apoderamiento*) and appropriation by the offender of the things subject of the robbery.

All told, we rule that accused-appellants Jumel Balangue and Juanito Balangue are guilty beyond reasonable doubt of the crime of simple robbery.

The penalty prescribed under Article 294(5) is prision correccional in its maximum period to prision mayor in its medium period, that is, four (4) years, two (2) months and one (1) day to ten (10) years.

Applying the Indeterminate Sentence Law[56], the penalty imposable should be an indeterminate penalty with a minimum term within the range of the penalty next lower in degree, which is arresto mayor in its maximum period to prision correccional in its medium period, or four (4) months and one (1) day to four (4) years and two (2) months, and whose maximum term should be the proper period of prision correccional in its maximum period to prision mayor in its medium period, or four (4) years, two (2) months and one (1) day to ten (10) years.

In the absence of any mitigating or aggravating circumstances, We sustain the ruling of the RTC imposing the indeterminate sentence of prision correccional in its medium period or four (4) years and two (2) months, as minimum term to prision mayor in its medium period or eight (8) years and twenty (20) days, as maximum term.

With respect to the civil liability of the accused-appellants, the restitution of the cash and of the stolen items to their respective owners ordered by the RTC is affirmed. Every person criminally liable for a person is also civilly liable. The civil liability includes restitution, reparation of the damage caused and indemnification for consequential damages.

The restitution of the thing itself must be made whenever possible. The accused-appellants are therefore obliged to return the cash in the amount of P729,178.84 they had taken from the employees of NFA, as well as other personal belongings and valuables contained in their bags as enumerated by the RTC.

WHEREFORE, in view of the foregoing, the appeal is hereby DISMISSED for lack of merit. The Decision dated July 30, 2008 and the Order dated November 12, 2008 by the Regional Trial Court of Cauayan City, Isabela, Branch 20 in Criminal Case No. 20-1528 are AFFIRMED .

SO ORDERED.

Abdulwahid, (Chairperson), and Barza, JJ., concur.

[1] Record for Criminal Case No. 20-1528, pp. 448-457.

[2] Record for Criminal Case No. 20-1528, p. 468.

[3] 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 reclusion perpetua to death, when by reason or on occasion of the robbery, the crime of homicide shall have been committed.chanrobles virtual law library
2. The penalty of reclusion temporal in its medium period to reclusion perpetua when the robbery shall have been accompanied by rape or intentional mutilation, or if by reason or on occasion of such robbery, any of the physical injuries penalized in subdivision 1 of Article 263 shall have been inflicted; Provided, however, that when the robbery accompanied with rape is committed with a use of a deadly weapon or by two or more persons, the penalty shall be reclusion perpetua to death (As amended by PD No. 767).
3. The penalty of reclusion temporal, when by reason or on occasion of the robbery, any of the physical injuries penalized in subdivision 2 of the article mentioned in the next preceding paragraph, shall have been inflicted.chanrobles virtual law library
4. The penalty of prision mayor in its maximum period to reclusion temporal in its medium period, if the violence or intimidation employed in the commission of the robbery shall have been carried to a degree clearly unnecessary for the commission of the crime, or when the course of its execution, the offender shall have inflicted upon any person not responsible for its commission any of the physical injuries covered by sub-divisions 3 and 4 of said Article 23.chanrobles virtual law library
5. The penalty of prision correccional in its maximum period to prision mayor in its medium period in other cases.

[4] Art. 296. Definition of a band and penalty incurred by the members thereof. — When more than three armed malefactors take part in the commission of a robbery, it shall be deemed to have been committed by a band. When any of the arms used in the commission of the offense be an unlicensed firearm, the penalty to be imposed upon all the malefactors shall be the maximum of the corresponding penalty provided by law, without prejudice of the criminal liability for illegal possession of such unlicensed firearms.

Any member of a band who is present at the commission of a robbery by the band, shall be punished as principal of any of the assaults committed by the band, unless it be shown that he attempted to prevent the same.

[5] REPUBLIC ACT NO. 7659, AN ACT TO IMPOSE THE DEATH PENALTY ON CERTAIN HEINOUS CRIMES, AMENDING FOR THAT PURPOSE THE REVISED PENAL LAWS, AS AMENDED, OTHER SPECIAL PENAL LAWS, AND FOR OTHER PURPOSES, December 13, 1993.

[6] Record for Criminal Case No. 20-1528, pp. 90-91.

- [7] Record for Criminal Case No. 20-1528, p. 123.
- [8] Record for Criminal Case No. 20-1528, p. 129
- [9] Record for Criminal Case No. 20-1528, pp. 156-157.
- [10] TSN dated October 16, 2002, pp., 5-6.
- [11] TSN dated October 17, 2002, pp. 20-22.
- [12] TSN dated October 21, 2002, pp.5-9.
- [13] TSN dated June 11, 2003, pp. 4-7.
- [14] Affidavit of Toribia Evie Bianzon executed on November 24, 2000, See Record for Criminal Case No. 20-1528, pp.5-7.Joint Affidavit of Milagros Hechorres, Elvira Ocampo and Felicidad Tiangson executed on November 24, 2000, See Record for Criminal Case No. 20-1528, pp.16-17.
- [15] Sworn Statement of Florante Fortunato executed on November 27, 2000, See Record for Criminal Case No. 20-1528, pp.8-10.
- [16] See Record for Criminal Case No. 20-1528, p. 295.
- [17] TSN dated October 17, 2002, pp 32-33;TSN dated October 21, 2002, pp.18-19; TSN dated June 11, 2003, p. 12,
- [18] See Record for Criminal Case No. 20-1528, pp.14, 15, 18.
- [19] TSN dated October 16, 2002, p. 7.
- [20] TSN dated October 17, 2002, pp. 23-24.
- [21] TSN dated October 21, 2002, pp. 9-10.
- [22] TSN dated June 11, 2003, pp. 7-8.
- [23] See Record for Criminal Case No. 20-1528, pp. 22-23.
- [24] See Record for Criminal Case No. 20-1528, pp. 356-357.
- [25] See Record for Criminal Case No. 20-1528, pp. 358-359.
- [26] Affidavit dated March 8, 2006, See Record for Criminal Case No. 20-1528, pp. 360.
- [27] Id.
- [28] Affidavit dated March 21, 2006, See Record for Criminal Case No. 20-1528, pp. 361.
- [29] Id.
- [30] See Record for Criminal Case No. 20-1528, pp. 459-466.
- [31] See Record for Criminal Case No. 20-1528, p.468.
- [32] See Record for Criminal Case No. 20-1528, pp. 471-472.
- [33] G.R. No. 179462 , February 12, 2009.
- [34] See Record for Criminal Case No. 20-1528, pp. 16-17.

- [35] TSN dated October 16, 2000, p. 6.
- [36] TSN dated October 17, 2000, p. 22.
- [37] TSN dated October 21, 2002, pp.7-8.
- [38] TSN dated June 11, 2003, p. 6.
- [39] G.R. No. 139697, June 15, 2004.
- [40] Id.
- [41] Id.
- [42] G.R No. 181902, August 31, 2011.
- [43] Zenaida Sazon vs. Sandiganbayan, G.R. No, 150873, February 10,2009.
- [44] TSN dated October 16, 2000, p. 6.
- [45] TSN dated October 16, 2000, pp. 13-14.
- [46] TSN dated October 21, 2002, pp.7-8.
- [47] TSN dated October 21, 2002, pp.7-8.
- [48] Eliseo Coscolla vs. People of the Philippines, G.R. No. 176566 , April 16, 2009.
- [49] Rustico Abay, Jr. and Reynaldo Darilag vs. People of the Philippines, G.R. No. 165896, Septeber 19, 2008.
- [50] TSN dated October 16, 2000, p. 7.
- [51] TSN dated October 17, 2000, p. 23-24.
- [52] TSN dated October 21, 2002, pp.9-10.
- [53] TSN dated June 11, 2003, p. 7.
- [54] People of the Philippines vs. Antonio Pareja, et., al., G.R. No. 88043, December 9, 1996.
- [55] People of the Philippines vs. Mitsuel Elarcosa and Jerry Orias, G.R. No. 186539, June 29, 2010.
- [56] Act No. 4103. SECTION 1. Hereafter, in imposing a prison sentence for an offense punished by the Revised Penal Code, or its amendments, the court shall sentence the accused to an indeterminate sentence the maximum term of which shall be that which, in view of the attending circumstances, could be properly imposed under the rules of the said Code, and the minimum of which shall be within the range of the penalty next lower to that prescribed by the Code for the offense; and if the offense is punished by any other law, the court shall sentence the accused to an indeterminate sentence, the maximum term of which shall not exceed the maximum fixed by said law and the minimum shall not be less than the minimum term prescribed by the same.

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