

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. MICHAEL ORTAL Y MENDEZ & LOUIE DIZON Y COMMENDADOR, ACCUSED-APPELLANTS.

Ponente: DE GUIA-SALVADOR, J.

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DE GUIA-SALVADOR, J.:

This is an appeal from the May 21, 2003 Judgment[1] of the Regional Trial Court of Pasig City, Branch 166, convicting accused-appellants Michael Orta y Mendez and Louie Dizon y Comendador, (or “appellants”) of the crime of robbery with homicide in Criminal Case No. 123179-H and robbery (hold-up) in Criminal Case No. 123180-H.

The Information charging appellants with robbery with homicide reads:

“On or about May 12, 2002, in Pasig City and within the jurisdiction of this Honorable Court, the accused conspiring and confederating together with Lordigal Dizon who was killed during the incident and all of them mutually helping and aiding one another while armed with knives and guns with intent to gain and by means of violence and intimidation did then and there willfully, unlawfully and feloniously take rob and divest one Almario De Guzman y Tengco, sum of money amounting to P1,000.00 to the latter’s prejudice and damage in the said amount of P1,000.00 and that by reason or on the occasion of the crime robbery said accused, with intent to kill did then and there wilfully unlawfully and feloniously attack assault and shoot said Almario De Guzman y Tengco with a gun, hitting him on the chest, thereby inflicting upon him gunshot wound which directly caused his death.”

That for robbery contains the following accusatory portion:

“On or about May 12, 2002, in Pasig City and within the jurisdiction of this Honorable Court, the accused, conspiring and confederating together, with one Lordigal Dizon who was killed during the incident and all of them mutually helping one another, while armed with knives and guns, with intent to gain and by means of violence or intimidation did then and there willfully, unlawfully and feloniously take, rob and divest one Orlan Alcantara y Remudario of his wallet containing cash money amounting to P300.00 to the damage and prejudice of the latter in the aforementioned amount.

Contrary to law.”

Upon arraignment on May 15, 2002, both appellants pleaded not guilty to the offenses charged. Trial on the merits ensued in due course.

The Facts

Version of the Prosecution

The prosecution presented as witnesses the private complainant, Orlan Alcantara, the police investigators, PO1 Glen Aculana and PO3 Aaron Samal, and Dr. Ma. Cristina B. Freyra.

The Solicitor General summarized the case for the prosecution as follows:

“About 6:30 in the morning of May 12, 2002, a passenger’s jeepney with plate No. DWL-381 bound for Cubao, Quezon City was traveling along Marcos Highway, Barangay Santolan, Pasig City. Three (3) male passengers who earlier boarded the jeepney at Cogeo, Antipolo City suddenly announced a hold-up and ordered the driver to slow down. Two (2) of the robbers were armed with knives while one (1) was armed with a .38 caliber revolver. The robbers looted the passengers of their money, cellular phones and other personal belongings, which they placed inside a bag. Orlan Alcantara, the jeepney conductor, and Almario de Guzman, the driver, were divested of their money in the amounts of P300.00 and P750.00, respectively. When the jeepney came to a full stop, Alcantara and De Guzman fled for their safety. Despite Alcantara’s warning, De Guzman returned to the jeepney to retrieve the keys from the ignition. Alcantara trailed him.

An unidentified male passenger, armed with a .45 caliber gun, fought with the robbers who were later identified as Lordigal Dizon and appellants. Lordigal Dizon was fatally shot in the chest while his brother, appellant Louie Dizon, was hit in the arm. While appellant Dizon was trying to wrestle the gun from the unidentified man, the gun went off and fatally hit De Guzman. Appellant Michael Ortal tried to escape but he was eventually caught and mauled by the bystanders after the unidentified man called out for help.

Alcantara brought De Guzman to the hospital but the latter was pronounced “dead on arrival” (DOA). Meanwhile, PO1 Glen Aculana was on mobile duty along with PO1 Bueneres Cruz when they received a radio dispatch regarding an ensuing robbery along Marcos Highway. When they arrived at said place, the bystanders handed over to them appellant Ortal. Ortal informed them that his companion, appellant Dizon, was injured and sprawled on the street.

Dizon was brought by the policemen to the hospital while Ortal was taken to the Marikina Police Station. The Pasig Police Station took custody of Ortal after it was determined that the locus criminis was in Pasig City.

PO3 Aaron Samal, who was assigned to the Criminal Investigation Bureau of the Pasig Police Station, was dispatched to the crime scene to investigate the incident together with Major Tomasito Clet, SPO1 Rogelio Villanueva and PO1 Jonas Nepales. They headed to the Marikina Police Station and took custody of Ortal. They then proceeded to the Amang Rodriguez Memorial Hospital and arrested Louie Dizon who was being treated for his gunshot wound. Thereafter, they went to the Quirino Memorial, Medical Center, together with Ortal, to locate the bodies of Lordigal Dizon and Almario de Guzman. Ortal identified Dizon’s body while De Guzman’s body was identified by his relatives.

De Guzman’s relatives informed the policemen that the passenger jeepney was left at the hospital’s parking area. The police checked it out and retrieved from the jeepney one (1) fan knife, four (4) empty shells of a .45 caliber gun, one (1) blood-stained yellow handkerchief and one (1) backpack.

Dr. Ma. Cristina B. Freyra, medico-legal officer of the Eastern Police District conducted a post-mortem examination on the body of De Guzman. Based on her findings, De Guzman died due to hemorrhagic shock as a result of a gunshot wound on the chest.”

For the defense, appellants Louie Dizon and Michael Ortal, Louie’s mother, Grace Dizon, and Meriam Lopez testified.

In the main, the defense insists that appellants were merely mistaken for robbers. Thus.

“...[O]n the date and time in question, accused Louie Dizon and his brother Lordigal boarded a jeepney in Cogeo, Antipolo City bound for Cubao, Quezon City, the jeepney which was almost in full capacity, stopped for one more passenger along Marcos Highway, Santolan Pasig City. An unidentified man, who smelled of liquor, boarded the jeepney and almost tripped on Lordigal’s foot. He berated Lordigal saying, “Putang-ina mo! Pakalat-kalat kasi yang paa mo!” Lordigal apologized but after several minutes, the man drew out a .45 caliber gun and fired and hit Lordigal. Then the man shouted, “Tulungan ninyo ako, tulungan niyo ako, mga hold-uppers!” The man continued firing his gun and hit Louie Dizon’s left arm. The man also hit the driver,

Almario de Guzman who had earlier scampered away but returned to the jeepney to get the key from the ignition.

The man tried to shoot Louie Dizon again but failed because the trigger jammed. Dizon jumped out of the jeepney but was immediately collared by the crowd.

Accused-appellant Ortal boarded the same jeepney. He then observed an unidentified passenger shouting invectives at Lordigal Dizon. The latter got angry and quarreled with the man. After a few minutes, the man shot Lordigal and shouted “Hold-uppers, hold-uppers!”. The man also shot the driver of the jeepney. When Ortal alighted from the jeepney, the people around seized him and mauled him. The policeman who arrived at the scene picked him up, brought him to the station and later to the hospital.

Meriam Lopez corroborated the version of the accused-appellants stating that while on board the passenger jeepney, an unidentified passenger, an unidentified passenger uttered “Putang-ina mo! At a young male passenger (Lordigal), who retorted “Putang-ina mo rin! After an exchange of vicious remarks, the unidentified passenger drew a gun and pointed it at the passenger in front of her. She immediately told the drivers to stop. As she alighted from the jeepney, she heard three gunshots. She never heard anybody utter the word “hold-up”

Grace Dizon identified herself in court as the mother of Lordigal Dizon. She declared that the barangay council of San Isidro, Antipolo authorized her family to solicit financial assistance for Lordigal’s internment.” [Citations omitted]

The Trial Court’s Ruling

Finding the evidence for the prosecution worthy of credence, the trial court went on to render its appealed May 21, 2003 Judgment, the fallo of which reads:

“WHEREFORE, the Court finds Michael Ortal y Mendez and Louie Dizon y Comendador Guilty beyond reasonable doubt as Principal(s) of the crime of Robbery with Homicide and there being neither mitigating nor aggravating circumstance, they are hereby sentenced to suffer the penalty of Reclusion Perpetua and to indemnify the heirs of Almario de Guzman the amount of P750.00, as actual damages, P50,000.00, for his death, and P50,000.00, as moral damages, plus the costs of suit.

The Court also finds Michael Ortal and Louie Dizon guilty beyond reasonable doubt as principal(s) of the crime of Robbery (Hold-up) and there being neither mitigating nor aggravating circumstance, and applying the Indeterminate Sentence Law, they are hereby sentenced to suffer the penalty of Four (4) Years and Two (2) Months of Prison Correccional, as minimum, to Eight (8) Years and Twenty (20) days of Prison Mayor, as maximum, and to indemnify Orlan Alcantara the amount of P300.00 as actual damages, plus the costs of suit.

SO ORDERED.”

The Issues

Unconvinced, appellants interposed this appeal[2] contending that the trial court gravely erred in not giving weight and credence to the defense witnesses’ testimonies and in finally finding them guilty of the crimes charged.[3]

The Court’s Ruling

It is apt to stress that when the credibility of the witnesses is in question, the trial court’s calibration of their testimonies and the assessment of their probative weight are accorded by the appellate court respect, if not conclusive effect, absent any clear showing that the trial court has overlooked, misconstrued, or misinterpreted some facts or circumstance of weight or substance which, if considered, might affect the result of the case[4], or

that it has acted arbitrarily in its appreciation of the facts. This is because the trial court has the unique advantage of observing at close range, the witness' demeanor, deportment and conduct under gruelling examination.[5]

In the present case, the trial court gave credence to the testimony of the prosecution witnesses and on the basis thereof convicted appellants as charged. We have ourselves judiciously examined the records and found no reason to disturb the trial court's findings.

Essentially, appellants' conviction is anchored on the eyewitness account of Orlan Alcantara, conductor of the passenger jeepney where appellants staged a robbery/hold-up and himself a victim of the heist.

Alcantara recounted that on May 12, 2002, at about 6:30 o'clock in the morning, he was on board the passenger jeepney with plate no. DWL-381 driven by Almario De Guzman, being the conductor thereof. While the jeep was travelling along Marcos Hi-way, Santolan, Pasig City, bound for Cubao, he noticed from where he sat next to De Guzman, a commotion among the passengers at the back. He saw three persons, two of them armed each with a knife, and a third, a .38 caliber revolver, divest the passengers of their wallets, cellphones and other personal belongings. One of the robbers collected the loot in a bag. Another pointed a knife at De Guzman and ordered him to slow down. Scared, the latter complied and handed over his and Alcantara's wallets, containing P700.00 and P350.00, respectively. Still another also took Alcantara's cellphone. As the jeepney came to a halt, an unidentified male passenger furtively fired his .45 caliber pistol and hit the robber wielding a revolver on the chest. The other robber armed with a knife wrestled with the passenger for possession of the pistol. Alcantara and De Guzman proceeded to scamper away from the jeepney but the latter returned to retrieve the key from the ignition system. It was while De Guzman was reaching for the key that the gun went off and hit him. The latter fell unconscious to the ground. Brought to the hospital, he was pronounced dead on arrival. A policeman from Pasig City later arrived at the hospital together with appellant Ortal. Alcantara identified as one of those who took part in the heist.

Like the trial court, we found the foregoing testimony of Alcantara categorical, straightforward and unequivocal. Alcantara remained consistent on cross-examination and never wavered in his identification of appellants. On the witness stand, his answers were prompt, concise and non-evasive. Alcantara could not have been mistaken. He witnessed the robbery up close. As conductor of the passenger jeepney that was held-up and one of the victims, he distinctly remembered appellant's faces and observed the manner in which they carried out their criminal design. At the police station, and later at the hospital and, finally, in the courtroom, he positively identified appellants as the culprits in the heist. We are thus convinced that he knew whereof he spoke. Without doubt, he is a credible witness and his convincing and trustworthy testimony suffices to support a finding of guilt beyond reasonable doubt.

What is more, Alcantara's positive identification of appellants as the robbers was corroborated by police officers PO1 Glen Aculana and PO3 Aaron Samar who took appellants into custody shortly after the heist. PO1 Aculana testified that after he and PO1 Buenerez Cruz received a radio dispatch regarding a robbery/hold-up along Marcos Hi-way, they immediately went to the crime scene where the people turned over to them appellant Ortal. When Ortal informed them that appellant Dizon, who was wounded and lying prone on the ground, was his companion, they also took the latter into custody.[6]

PO3 Samar, for his part, declared that in the same morning of May 12, 2002, he was sent out together with Major Tomasito Clet, SPOI Rogelio Villanueva and PO1 Jonas Nepales to respond to a reported robbery. After conducting an investigation at the crime scene, they proceeded to the Marikina Police Station and took custody of Ortal. Thereafter they went to the Amang Rodriguez Memorial Hospital in Marikina City and arrested Louie Dizon.[7]

No ill motive having been imputed against them to testify falsely against appellants, and absent any showing that they were not properly performing their duty as law enforcement officers, PO1 Aculana and PO3 Samar are entitled to the legal presumption of regularity in the performance of their official duties.[8]

Significantly, appellants have neither discredited the testimony of Alcantara nor imputed any ill motive on his part to testify falsely against them. In the absence of evidence that Alcantara was actuated by ill motive, the presumption is that he was not so actuated, and his testimony is entitled to full faith and credit.

In support of their claim of innocence, appellants insist that they were merely mistaken for robbers. According to them, an unidentified male passenger boarded the jeepney and after he almost tripped on Lordigal's foot, he berated Lordigal, drew out a .45 caliber pistol, fired it at the latter and shouted "tulungan niyo ako, mga holduppers!". The unidentified male passenger continued firing his pistol and in the process injured Louie on the left arm and fatally hit De Guzman, the jeepney driver.

Pitted against the categorical and positive testimony of Alcantara, appellants' defense of denial miserably fails. Practically viewed as a weak defense and concededly worthless in the face of their positive and unequivocal identification by Alcantara, appellants' denial is rendered even more futile by their conflicting testimonies and that of their witness, Meriam Lopez.

At this point, it is apt to stress that positive identification where categorical and consistent and without any showing of ill-motive on the part of the eyewitness testifying on the matter, prevails over alibi and denial which, if not substantiated by clear and convincing proof, are negative and self-serving evidence undeserving of weight in law.[9]

Of marked relevance is the reaction of the jeepney passengers in yet ganging up on appellants even after Lordigal had been gunned down and appellant Louie had sustained a gunshot wound on his arm. This only confirms the truth of what Alcantara had stated – that appellants were the ones who pulled off the heist.

A conviction for robbery with homicide requires the prosecution to firmly establish the following elements: (a) the taking of personal property with violence or intimidation against persons; (b) the property taken belongs to another; (c) the taking was done with *animo lucrandi*; and, (d) on the occasion of robbery or by reason thereof, homicide was committed.[10]

In the instant case, the prosecution has established, with proof beyond reasonable doubt, the confluence of all the essential elements of the crime of robbery with homicide. Prosecution eyewitness Alcantara testified that, while brandishing their weapons, appellants, along with the deceased Lordigal Dizon, stripped the driver, conductor and passengers of the jeepney of their cash, cellular phones and other personal belongings by means of force and intimidation and with obvious intent of gain, and, on the occasion thereof, the driver De Guzman was accidentally shot dead. Case law has it that whenever homicide takes place by reason or on occasion of robbery, all those who took part as principals in the robbery shall also be held guilty of the special complex crime of robbery with homicide, whether or not they actually participated in the killing, unless there is proof that they had endeavored to prevent the perpetration of the crime.[11]

All the foregoing notwithstanding, appellants deserves an acquittal in Criminal Case No. 123180-H. The robbery subject of said criminal case and the robbery that occasioned the death of De Guzman, subject of Criminal Case No. 123179-H, are not separate and distinct acts of robbery. Rather, the former is deemed absorbed by the latter because both arose from a single criminal design to take personal properties with intent of gain and with the use of violence or intimidation against persons. As the Supreme Court succinctly elucidated in the case of *People vs. Escote*,[12] "[E]ven if the victim of robbery is other than the victim of the homicide committed on the occasion of

or by reason of the robbery, nevertheless, there is only one single and indivisible felony of robbery with homicide. All the crimes committed on the occasion or by reason of the robbery are merged and integrated into a single and indivisible felony of robbery with homicide.”

The penalty for the crime of robbery with homicide is reclusion perpetua to death.[13] There being no modifying circumstances that attended the commission of the crime, the trial court correctly imposed the penalty of reclusion perpetua.[14]

We affirm the trial court's award of P50,000.00 as civil indemnity. The victim's heirs are entitled to civil indemnity in the said amount without other proof than the fact of the victim's death.[15] Moreover, in cases of violent death, moral damages can be awarded even in the absence of further proof other than the death of the victim[16] since an untimely death invariably brings about emotional pain and anguish on the part of the victim's family.[17]

WHEREFORE, with the MODIFICATION acquitting appellants of the crime of robbery in Criminal Case No. 123180-H, the appealed decision is AFFIRMED in all other respects.

SO ORDERED.

Reyes, (Chairman) and Roxas, JJ., concur.

[1] Rollo, pp. 19-26.

[2] Transferred to the Court of Appeals from the Supreme Court for intermediate review pursuant to People vs. Mateo, 433 SCRA 640 (2004).

[3] Brief for the Accused-Appellants, Rollo, p. 40.

[4] People vs. Nunez, 353 SCRA 285 (2000).

[5] People vs. Decillo, 341 SCRA 591 (2000), People vs. Tinampay, G.R. No. 146271, May 29, 2003

[6] Decision, p. 4, Rollo, p. 21.

[7] Decision, p. 4, Rollo, p. 22.

[8] People vs. Nunez, 353 SCRA 285 (2001).

[9] People vs. Jose, 381 Phil. 845 (2000).

[10] People vs. dela Cruz, 405 SCRA 112, 124 citing People vs. Baccay, et al., 277 SCRA 296 (1997).

[11] Ibid.

[12] G.R. No. 140756, April 4, 2003, 400 SCRA 603, 631

[13] Revised Penal Code, Article 294, par. 1. People vs. Escote, ibid.

[14] Ibid, Article 63, par. 2.

[15] People vs. Diaz, 395 SCRA 52.

[16] People vs. Punsalan, 370 SCRA 379.

[17] People vs. Mallari, G.R. No. 145993, June 17, 2003.

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