

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. VIRGILIO BRAZIL Y ABAD, ACCUSED-APPELLANT.

Ponente: DICDICAN, J.

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DICDICAN, J.:

Before this Court is an appeal seeking the reversal of the Decision dated March 5, 2012[1] rendered by the Regional Trial Court (RTC) of Quezon City, Branch 219, finding accused-appellant Virgilio Brazil y Abad guilty beyond reasonable doubt of robbery with homicide in conspiracy with one Raul Ocampo, Jr. y Baltazar. Likewise assailed is the Order dated July 10, 2012[2] issued by the same court denying Appellant's Motion for Reconsideration.[3]

In an Information dated November 26, 2002,[4] accused-appellant was charged of robbery with homicide, in conspiracy with Raul Ocampo, Jr. y Baltazar and the deceased Ildefonso Gratela II y Casia, committed as follows:

“That on or about the 24[th] day of November 2002, in Quezon City Philippines, the said accused, conspiring, confederating with one ILDEFONSO GRATELA II Y CASIA (now deceased) and mutually helping one another, with intent of gain, by means of force, violence and/or intimidation, did then and there willfully, unlawfully and feloniously rob one MARIFE AYSON-DUMADAG Y RUSIANA in the following manner, to wit: on the date and place aforementioned while complainant was walking along N. Domingo Street, Brgy. Valencia, this City, on her way to a nearby church, accused by means of conspiracy, who were on board a red Toyota Corona with plate No. NCY-627 suddenly alighted therefrom, and at gunpoint, forcibly grabbed, snatched, and carried away one (1) unit 3310 Nokia cellphone valued at P3,000.00 Philippine Currency, belonging to MARIFE AYSON-DUMADAG Y RUSIANA, to the damage and prejudice of said offended party; that on the occasion of said Robbery, accused sped-off towards the direction of Cubao resulting in a running gunbattle between accused and the apprehending police officers, as a result thereof, accused ILDEFONSO GRATELA II Y CASIA was shot and killed in the firefight, to the damage and prejudice of offended party, Marife Ayson-Dumadag y Rusiana.

“CONTRARY TO LAW.”

The accused-appellant pleaded not guilty during the arraignment.[5] A pre-trial was conducted by the trial court. Thereafter, trial on the merits ensued.

During the trial, on April 3, 2003 and April 24, 2003, the prosecution presented Marife Dumadag, the victim of the robbery. On the latter date, or on April 24, 2003, accused-appellant's counsel conducted his cross examination. She confirmed and reiterated material facts as set out in the Information as follows:

On November 24, 2002, she (Marife Dumadag) was walking along Domingo St., Quezon City when a red car, carrying three people, passed her by. A man from that car later alighted and chased her. The man started talking to her but before he could finish his own sentence, he drew out a gun, pointed it at her stomach and demanded for and snatched her cellphone. The man was later identified by Marife Dumadag as herein accused-appellant. Fortunately for Marife Dumadag, policemen were in the area at that time. The policemen saw accused-appellant rushing back to the red car while Marife Dumadag was shouting, hence, the policemen, aboard their mobile police

car, chased the red car of Appellant. A second police mobile car picked up Marife Dumadag and joined the car chase all the way to Pasig City where the red car bumped a parked van and a lamp post. Two persons inside the red car were subsequently arrested by the police. The third man inside the car was left there in the meantime as he was already dead, as a result of a firefight or gun-battle between the police officers and the offenders.[6]

On succeeding trial dates, the Public Prosecutor presented SPO2 Moises Tacdol and PO3 Ronaldo Amar as witnesses, both finishing their testimonies on cross-examination.[7] The testimony of SPO1 Crescenciano Bajao was dispensed with as the parties agreed to stipulate that he was the investigator of the case and that he took down the statement of Mary Ayson-Dumadag.[8] The Public Prosecutor then formally offered his evidence and rested his case.[9]

On April 6, 2010, Raul Ocampo, Jr. was called to the witness stand[10] and his testimony on cross-examination was completed on May 25, 2010.[11]

Raul Ocampo, Jr.'s co-accused, herein accused-appellant Virgilio Brazil, was then called to testify on direct and cross examination on October 21, 2010.[12] He narrated that on November 17, 2002, he was at the residence of his sister in Pasay City, waiting for Spouses Rey and Trinidad Esguerra. When Mrs. Esguerra arrived, accused-appellant went with her to Maybunga Street in Pasig City to look for a junk shop where they may find scrap metals which they will buy and sell for profit as Mrs. Trinidad is engaged in a junk shop business. While walking along Maybunga Street, Pasig City, a red car suddenly appeared and hit a public utility jeep. A mobile police car followed and a policeman soon came out and started shooting at the red car. As a result, people in the area ran for safety, including accused-appellant. The policeman however shouted for accused-appellant to stop running, otherwise he would be shot. The accused-appellant complied and he was subsequently ordered to lay face-down while the police officer handcuffed him and forcibly placed him in the police car without explaining why he was being arrested. Accused-appellant was then brought to Camp Panopio where he was beaten by the arresting officer and robbed of the P15,000.00 that he had with him, which amount was intended for the purchase of scrap metals. An hour later, he was brought to Camp Karingal where he met Raul Ocampo, Jr. for the first time. On November 24, 2002, an Information for robbery with homicide was filed against him and Raul Ocampo, Jr.[13]

Trinidad Esguerra was then presented as a witness on succeeding trial dates, after which, accused-appellant's counsel rested his case, there being no other witnesses to be presented.[14]

In the assailed Decision dated March 5, 2012, the lower court found accused-appellant Virgilio Brazil and Raul Ocampo, Jr. guilty beyond reasonable doubt of the crime of robbery with homicide, the dispositive portion of the said decision states as follows:

“WHEREFORE, finding the accused VIRGILIO BRAZIL Y ABAD and RAUL OCAMPO JR. y BALTAZAR guilty beyond reasonable doubt, they are hereby sentenced to suffer the penalty of RECLUSION PERPETUA , with both accused eligible for parole, pursuant to the provisions of the Revised Penal Code.”[15]

Herein accused-appellant filed a Motion for Reconsideration of the above-quoted Decision in the lower court while co-accused Raul Ocampo, Jr. prayed to be released on parole.[16] In the assailed Order dated July 10, 2012, the lower court denied Appellant's Motion for Reconsideration.

Hence, this appeal wherein the accused-appellant submits the following issues for resolution:

I.

WHETHER OR NOT ACCUSED-APPELLANT WAS PART OF THE GROUP OF RAUL OCAMPO IN THE COMMISSION OF THE ALLEGED ROBBERY.

II.

WHETHER OR NOT THERE IS ADMISSIBLE EVIDENCE TO SHOW THAT ACCUSED-APPELLANT WAS THE PERSON WHO TOOK THE CELLPHONE OF PRIVATE COMPLAINANT.

III.

WHETHER OR NOT THE TRIAL COURT CAN CONSIDER IN EVIDENCE THE TESTIMONY OF PRIVATE COMPLAINANT NOTWITHSTANDING THE UNJUSTIFIED FAILURE OF THE SAME TO RETURN TO THE WITNESS STAND FOR THE COMPLETION OF HER CROSS-EXAMINATION.

IV.

WHETHER OR NOT THE DEATH OF A ROBBER AT THE HANDS OF A POLICEMAN DURING A RUNNING GUN BATTLE CAN MAKE THE CRIME OF ROBBERY A COMPLEX CRIME OF ROBBERY WITH HOMICIDE.

V.

WHETHER OR NOT THE ACCUSED-APPELLANT COULD BE LIABLE FOR THE DEATH OF ANOTHER ACCUSED LAWFULLY SHOT BY A POLICEMAN.

VI.

WHETHER OR NOT THE PENALTY OF RECLUSION PERPETUA IS COMMENSURATE TO THE CRIME IMPUTED UPON ACCUSED-APPELLANT[17].

The appeal has no merit.

The first two issues raised by the accused-appellant are factual in nature. It is well entrenched in this jurisdiction that factual findings of the trial court on the credibility of witnesses and their testimonies are entitled to the highest respect and will not be disturbed on appeal in the absence of any clear showing that it overlooked, misunderstood, or misapplied some facts or circumstances of weight and substance that would affect the result of the case. Having seen and heard the witnesses themselves and observed their behavior and manner of testifying, it was in a better position to decide the question of credibility.[18]

Certainly, the lower court properly found that accused-appellant was part of the group of Raul Ocampo in the commission of the crime as he was positively identified by Marife Dumadag as the one who threatened her with a gun and snatched her cellphone. Hence, the case for the prosecution rests on the positive identification of the accused-appellant by his victim while the defense of accused-appellant rests on alibi.

The Supreme Court in *People vs Villarico*[19] elucidated that “truly, a positive identification that is categorical, consistent, and devoid of any showing of ill or vile motive on the part of the prosecution witnesses always prevails over alibi and denial that are in the nature of negative and self-serving evidence. To be accepted, the denial and alibi must be substantiated by clear and convincing evidence establishing not only that the accused did not take part in the commission of the imputed criminal act but also that it was physically impossible for the accused to be at or near the place of the commission of the act at or about the time of its commission”.

Hence, given Marife Dumadag's positive and unequivocal identification of herein accused-appellant, absent any ill-will or motive on the part of the witness, the accused-appellant's defense of denial and alibi must fail.

As to the third issue, accused-appellant is of the opinion that the testimony of Marife Dumadag should have been stricken off from the records because she did not return to the witness stand for completion of her cross-examination. We find that this issue had long been duly laid to rest by the lower court on February 18, 2005 as reflected in the Order of the same date, pertinent portion of which states as follows:

"For consideration is the motion of the defense counsel to strike off from the records of this case the testimony of private complainant Marife Dumadag on the ground of her repeated failure to appear in court despite notice for the continuation of her cross-examination.

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XXX

However, upon perusal of the transcript of stenographic notes of the witness, the court came to the conclusion to DENY the motion. As enunciated in the case of *People vs Barasina* GR No. 10993, July 21, 1994, what is proscribed by statutory norm (Section 1 [f], Rule 115 of the Rules of Criminal Procedure) and its jurisprudential precept is the absence of the opportunity to cross-examine the witness (*US vs Javier* 37 Phil 449 (1918); 2 *Regalado Remedial Law Compendium*, 1988 ed., p. 296) and certainly does not cover the situation where the witness had been extensively examined on material points and thereafter failed to appear (*People vs Gorospe* 129 SCRA 233 {1984}; *Regalada Vide* at p. 534) more so, when in this case the failure to complete the cross examination was not brought about by the prosecution." [20]

Hence, as reflected in the April 24, 2003 transcript of records of the lower court, particularly pages 17 to 35 thereof, it is apparent that accused-appellant's lawyer questioned Marife Dumadag regarding her familiarity with the routes of Quezon City, the distance at which the red Toyota car stopped in front of her, lighting condition of the place, the difference between a Toyota Corolla and a Toyota Altis, how the accused-appellant initially talked with her and what she did while she was being threatened with a gun, how long the whole incident took place, how she knew that there were three men in the car, what the three men were wearing and how they looked like, how she came in contact with the accused-appellant during the robbery incident, what the accused-appellant told her and did to her and how she reacted to the snatching of the cellphone.

Although accused-appellant's counsel asked for continuance at the end of the cross-examination, it is herein noted that Marife Dumadag had already been extensively cross-examined. In *People vs. Gorospe*, [21] a case mentioned in the Order of the lower court dated February 18, 2005, the Supreme Court ruled as follows:

"While cross-examination is a right available to the adverse party, it is not absolute in the sense that a cross-examiner could determine for himself the length and scope of his cross-examination of the witness. The court always has the discretion to limit the cross-examination and to consider it terminated if it would serve the ends of justice."

Under the fourth, fifth and sixth issue raised by accused-appellant, it is argued that there is no homicide committed because when one of the robbers was killed, the policemen were acting in the fulfillment of their duty or in the lawful exercise of a right or office [22] and, thus, the accused-appellant may not be convicted of robbery with homicide. Accused-appellant also pointed out that the underlying rule in the special complex crime of robbery with homicide is conspiracy and that there is no conspiracy in this case. In connection with this, accused-appellant protests the imposition of the penalty of reclusion perpetua considering that he should not be held responsible for the acts of the policeman.

We find that the crime committed is robbery with homicide and that the penalty of reclusion perpetua was properly imposed.

The elements of robbery with homicide are: (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 with animus lucrandi; and (4) by reason of the robbery or on the occasion thereof, homicide is committed.[23] All elements are in attendance in the instant case.

Contrary to the contention of accused-appellant that there is no homicide as the case falls under the justifying circumstances under the Revised Penal Code, the term "homicide" as used in the special complex crime of robbery with homicide is applied in its generic sense, without reference to whether or not it falls under Article 11, paragraph 5 of the Revised Penal Code.

What is important is that the death of Ildefonso Gratela II y Casia was shown by the corpus delicti. A death certificate, as opposed to the theory of accused-appellant, is not absolutely necessary. Hence, the Supreme Court in *People vs. Kalim*[24] explained that, "as a matter of practice and procedure, death certificate is not indispensable. If it were, numerous murders would go unpunished. Corpus delicti is the fact of the commission of the crime which may be proved by the testimony of eye-witnesses who saw it." The testimony of the prosecution witnesses factually established the death of one of the robbers named Ildefonso Gratela II y Casia.

Likewise immaterial is the fact that the victim of homicide is one of the robbers; the felony would still be robbery with homicide. Once a homicide is committed by or on the occasion of the robbery, the felony committed is robbery with homicide. All the felonies committed by reason of or on the occasion of the robbery are integrated into one and indivisible felony of robbery with homicide. The word "homicide" is used in its generic sense. Homicide, thus, includes murder, parricide, and infanticide.[25]

In the case of *People vs. Arpa*[26] citing *People vs. Mangulabnan, et al.*[27], the Supreme Court pointed out that the "English version of the Code is a poor translation of the prevailing Spanish text of same paragraph, which reads as follows:"

I. o Con la pena de reclusion perpetua a muerte cuando con motivo o' con ocasion del robo resultare homicidio.

Thus, the Supreme Court went on to explain as follows:

"We see, therefore, that in order to determine the existence of the crime of robbery with homicide it is enough that a homicide would result by reason or on the occasion of the robbery (Decision of the Supreme Court of Spain of November 26, 1892, and January 7, 1878, quoted in 2 Hidalgo's Penal code, p. 267 and 259-260, respectively). This High Tribunal speaking of the accessory character of the circumstances leading to the homicide, has also held that it is immaterial that the death would supervene by mere accident (Decision of September 9, 1886; October 22, 1907; April 30, 1910 and July 14, 1917), provided that the homicide be produced by reason or on occasion of the robbery, inasmuch as it is only the result obtained, without reference or distinction as to the circumstances, causes, modes or persons intervening in commission of the crime, that has to be taken into consideration (Decision of January 12, 1889 — see Cuello Calón's Código Penal p. 501-502)."

The issue raised by accused-appellant in that there is no conspiracy is of no moment considering that it has been established by the prosecution witnesses that he conspired with his co-accused in committing the robbery. It is settled that, when a homicide is committed on the occasion of a robbery, all those who took part as principals in the perpetration of the robbery will also be held guilty as principals in the complex crime of robbery with homicide although they did not actually take part in the homicide, unless it appears that they endeavored to

prevent the killing.[28]

As to the penalty imposed on accused-appellant, it is herein worth noting that the lower court observed the presence of mitigating circumstance and the absence of aggravating circumstance and thus correctly ruled as follows:

“Consonant to the abolition of death penalty under Republic Act No. 9346, the penalty that can be imposed is only reclusion perpetua subject to the condition imposed by the said law. Section 2 of RA 9346 provides that sentences “which” will be reduced to reclusion perpetua by reason of the law, shall not be eligible for parole.

In the present case, this court did not find the presence of any aggravating circumstances. The court may even appreciate the presence of a mitigating circumstance as this will be favorable for both accused. Under Article 13 specifically par 3 of the Revised Penal Code, one of the mitigating circumstances enumerated is 'that the offender had no intention to commit so grave a wrong as that committed.' For this reason, the imposable penalty is reclusion perpetua with both accused still eligible for parole.”[29]

WHEREFORE, in view of the foregoing premises, the appeal filed in this instant case is DENIED and the Regional Trial Court's Decision dated March 5, 2012 and the Order dated July 10, 2012 finding accused-appellant Virgilio Brazil y Abad, acting in conspiracy with one Raul Ocampo, Jr. y Baltazar, guilty beyond reasonable doubt of the crime of robbery with homicide are AFFIRMED.

SO ORDERED.

C E R T I F I C A T I O N

Pursuant to Article VII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

Elibinias and Paredes, JJ., concur.

[1] Record, Criminal Case No. Q02-113683 pp. 275-295

[2] Ibid., pp. 331-335

[3] Ibid., pp. 301-310

[4] Ibid., pp. 1-2

[5] Ibid., Regional Trial Court Order dated January 13, 2003, page 17

[6] Transcript of Stenographic Notes dated April 3, 2003 (11 pages) and April 24, 2003 (35 pages)

[7] Record, Regional Trial Court Order dated March 29, 2005, page 71; RTC Order dated August 30, 2005, page 85; RTC Order dated March 21, 2006, page 100

[8] Ibid., Regional Trial Court Order dated October 5, 2006, page 114

[9] Ibid., Formal Offer of Evidence, pp. 133-134

[10] Ibid., Regional Trial Court Order dated April 6, 2010, page 181

[11] Ibid., Regional Trial Court Order dated May 25, 2010, pp. 184

[12] Ibid., Regional Trial Court Order dated October 21, 2010, page 195

- [13] Transcript of Stenographic Notes dated October 21, 2010 consisting of sixteen (16) pages
- [14] Record, Regional Trial Court Order dated June 2, 2011, page 210
- [15] Ibid., page 295
- [16] Ibid., Letter of the Public Attorney, in behalf of Raul Ocampo Jr to the Board of Pardons and Parole dated March 23, 2012, page 297
- [17] Rollo, Appellant's Brief, page 54-55
- [18] People vs. Edem, G.R. No. 130970, February 27, 2002
- [19] G.R. No. 158362, April 4, 2011
- [20] Record, Regional Trial Court Order dated February 18, 2005, pp.65-66

[21] 129 SCRA 223

- [22] Justifying Circumstance, Article 11, paragraph 5 of the Revised Penal Code
- [23] People v. Tidula, 292 SCRA 596
- [24] G.R. No. L-1172, May 27, 1948
- [25] People vs. Ebet G.R. No. 181635, November 15, 2010
- [26] G.R. No. L-26789, April 25, 1969
- [27] 99 Phil. 992, 998-99999 Phil. 992, 998-999
- [28] Guevara, Revised Penal Code, p. 578, citing U.S. vs. Macalalad, 9 Phil., 1; U.S. vs. Macalalad, 9 Phil., 1 U.S. vs. Santos, et al., 4 Phil., 189.
- [29] Rollo, p. 114

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