

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROLLIE DEL ROSARIO Y DELA CRUZ A.K.A. LOUIE, MICHAEL LOPEZ Y CASTILLO, DANILO PULBOS Y BAMOYA A.K.A. BONG, AND BASILIO PALIMAN...

Ponente: SADANG, J.

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SADANG, J.:

This is an ordinary appeal from the Decision[1] dated June 24, 2010 of the Regional Trial Court of Cabanatuan City, Branch 27 in Crim. Case No. 15196 finding accused-appellants Rollie Del Rosario y Dela Cruz a.k.a. “Louie,” Michael Lopez y Castillo, Danilo Pulbos y Bamoya a.k.a. “Bong” and Basilio Paliman y Ambat (hereafter, appellants) guilty beyond reasonable doubt of robbery with homicide under Article 294, par. 1 of the Revised Penal Code.

The Amended Information indicting accused reads:

That on or about the the 19[th] day of May 2005, in the City of Cabanatuan, Republic of the Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with deadly weapons, conspiring, confederating, and mutually aiding and abetting with one another, with intent to gain and by means of force and violence and intimidation on the person of one Ian Kidd Macamay y Montenejo and Marla Valeriana y Fraile, did then and there, willfully, unlawfully and feloniously take, steal and carry away wallet, cellular phone Smart Amazing, Nokia Cellular Phone Model 2100 in the total amount of P30,500.00 against their will and consent and to their damage and prejudice and, on the occasion and by reason of the said robbery, the above-named accused with intent to kill, did then and there, willfully, unlawfully and feloniously attack, assault and used personal violence upon the person of Ian Kidd Macamay y Montenejo, that is, by shooting the latter in the face with the use of homemade shotgun which directly caused his death.

CONTRARY TO LAW.[2]

Appellants entered not guilty pleas at the arraignment on September 7, 2005, hence, pretrial and trial ensued.

The prosecution presented Marla Valeriano, Dr. Jun Concepcion, PO3 Eugenio Estole, PO2 Abraham Rafanan, and Nelson Macamay.

Marla Valeriano testified that on May 19, 2005, at around 12:30 AM, Ian Macamay fetched her and her co-trainee at Jollibee, Cabanatuan City in a Ford Lynx car and they went to eat lugaw at Shiela Hilton Eatery, Del Pilar St. After eating, she and Ian brought her co-trainee home to Bantug Norte after which they headed towards Barangay (Brgy.) H. Concepcion, Cabanatuan City. While cruising along Emilio Vergara Highway, Ian parked the car on the side of the road. Ian took off his clothes and shorts and Marla's upper garments. As the couple was kissing, the back door of the car suddenly opened, prompting Marla to put on Ian's shirt. The right front door also opened and a man got inside the car, poking a knife at Marla even as another man knocked on the driver's door. As Ian opened the door, Marla saw another man pointing a gun at Ian's temple. Two other men were outside the car. The man with the gun demanded the car keys from Ian and ordered the couple to get out of the car. Ian asked for time to

put on his clothes. As Marla closed her eyes, she heard a gun shot and felt blood splatter on her. When she looked, Marla saw Ian sprawled on the grass. The two men who sat beside Marla were half-naked and one of them poked a knife at her saying: “Huwag kang maarte at papatayin kita talaga.” This man was not the same man who first poked a knife at her. Out of fear, Marla jumped to the backseat and found a bag and searched it for anything that she could use to defend herself with. The man with the knife saw the bag and grabbed it from Marla claiming that she might be hiding a gun. At that point, Marla pretended to lose consciousness. One of the two men who were taking the couple's belongings in front of the car gently slapped Marla's face saying: “Relax ka lang hindi kami gumagalaw ng babae.” Marla slowly opened her eyes and saw that the man who slapped her was the one holding a gun. The men asked for the car keys and asked Marla if she can drive. Marla replied that she cannot and one of the men turned the ignition key. The car did not start but the car alarm went off. The assailants took Ian's Amazing Smart Phone and Marla's Nokia 2100 and P500 cash and let Marla go, instructing her to take the road to Kapitan Pepe Subdivision. When she reached the subdivision, Marla went to the house of Ken, her cousin's friend, and narrated what happened. At around 4 AM, she was at the Cabanatuan City Police Station to report the incident.

PO3 Eugenio Estole was the officer on duty at the Provincial Intelligence and Investigation Branch, Nueva Ecija Provincial Police Office when Marla came to report the incident at 4 AM of May 19, 2005. Per instructions of Col. Obusan, P03 Estole accompanied Marla to Brgy. ACCFA and other barangays of Cabanatuan City for immediate follow-up operations, however, they were not able to find anyone who fit Marla's description of the malefactors. At 7 AM of May 20, 2005, P03 Estole and Marla, together with PO1 Jose S. Cayanan, went to the area near the scene of the crime but they did not find any of the suspects. They went back to the police station at around 9 AM and Marla described the appearance of the two suspects to a cartographic artist. At around 1:30 PM, they returned to Brgy. Concepcion with the cartographic sketches. A woman who saw the sketches told them that one of those depicted resembles accused Michael Lopez. They also learned that Lopez was on a bus bound for

Pampanga with his family. They chased the bus and as Lopez disembarked, he was positively identified by Marla, then inside a tinted car, as the one who poked a knife at her. Lopez was arrested and the identities of the other perpetrators were made known and they were arrested.

PO2 Abraham Rafanan testified that on May 19, 2005, at around 6 AM, he received a phone call from a concerned citizen informing about a dead male person found along Gen. Tinio Extension, Brgy. Concepcion, Cabanatuan City. He went to the site and saw the naked cadaver of a male person on the grass. A few meters from the cadaver was an abandoned Ford Lynx Car with blood scattered on the front seats. Investigation showed that the car was borrowed by Ian Macamay from Maricel Maglalang.

Dr. Jun Concepcion testified that on May 19, 2005, from 2 PM to 2:45 PM, he performed an autopsy on the cadaver of Ian Macamay. He stated that the victim sustained a gunshot wound on the left side of the head which exited at the right frontal area and caused his death. Around the wound was a dark colored stain which could have been caused by burnt gunpowder and suggests that the victim was shot at close range.

Nelson Macamay, the victim's father, averred that before his death, Ian was a medical representative of Zuellig Pharma, Inc. earning P10,000.00 a month. Nelson testified on the expenses they incurred as a result of Ian's death thus: a) P8,000.00 for the transport of the body from Cabanatuan City to Parañaque City; b) P30,000.00 for funeral services by Holy Trinity Memorial Chapels; c) P65,000.00 for the burial lot; d) P16,000.00 as interment fee; e) P1,200.00 as marker fee; and f) P2,000.00 as rental fee at Manila Memorial Park.

All the appellants testified in their defense and they all denied participation in the crime.

Rollie Del Rosario claimed that he is a canteen helper at Brgy. Poblacion, San Antonio, Nueva Ecija. On May 19,

2005, he was sleeping in his house at Brgy. Maugat, San Antonio, Nueva Ecija with his co-workers, Jojo and Anna. He knows accused Pulbos but they have not seen each other since 2002 and he met Lopez and Paliman for the first time in prison.

Michael Lopez claimed that on May 19, 2005, between 1 AM and 2 AM, he was in his house at Brgy. San Josef Sur, Cabanatuan City watching television. He was arrested as he and his family were on their way to Pampanga to secure the birth certificate of his child. He was brought to the PNP Jail near the Cabanatuan City Hall where he was mauled and electrocuted by officers Rafanan and Tanghay. He does not know the other accused and he met them only in jail.

Danilo Pulbos testified that on May 19, 2005, at around 1 AM, he was at their house at Sta. Romana Compound, Purok 1, Barangay San Josef Norte, Cabanatuan City taking care of their newly born baby. He was arrested on May 21, 2005 at the gate of the National Food Authority when he was about to go to work. He met Del Rosario sometime in 2003 and he met Lopez and Paliman only in jail.

Basilio Paliman averred that at around midnight of May 19, 2005, he was sleeping inside his house at Brgy. Sambermicristi, Cabanatuan City. He was arrested on May 23, 2004 at Brgy. Sambermicristi. He came to know his co-accused only when he was detained at the PNP Cabanatuan City Jail.

On June 24, 2010, the trial court rendered a Decision,[3] the fallo of which reads:

WHEREFORE, premises considered, this Court finds the accused Rollie Del Rosario y Dela Cruz, Michael Lopez y Castillo, Danilo Pulbos y Bamoya and Basilio Paliman y Ambat GUILTY beyond reasonable doubt of the crime of Robbery with Homicide under Article 293 and penalized under Article 294, par. 1 of the Revised Penal Code. Accordingly, they are hereby sentenced to suffer the penalty of imprisonment of forty (40) years of reclusion perpetua.

Rollie Del Rosario, Michael Lopez, Danilo Pulbos and Basilio Paliman are likewise ordered to pay Marla Valeriano, jointly and severally, the amount of Twenty Thousand (Php 20,000.00) Pesos by way of moral damages and Seven Thousand (Php 7,000.00) Pesos by way of restitution of the property and money taken from her. All the accused are likewise ordered to pay the heirs of Ian Kidd Macamay, jointly and severally, the amount of Fifty Thousand Pesos (Php 50,000.00) Pesos by way of moral damages, and One Hundred Twenty Two Thousand Two Hundred (Php 122,200.00) Pesos by way of actual damages, and the amount of Four Hundred Thirty Nine Thousand Two Hundred (P439,200.00) Pesos by way of loss of earning capacity of Ian Kidd Macamay.

In the service of the sentence, accused shall be credited with the full time of their preventive detention if they agreed voluntarily and in writing to abide by the disciplinary rules imposed upon convicted prisoners pursuant to Article 29 of the Revised Penal Code.

SO ORDERED.

Appellants' Notice of Appeal[4] was given due course in the Order[5] dated August 12, 2010.

Appellants raise the following assignment of errors:

- THE TRIAL COURT GRAVELY ERRED IN GIVING FULL WEIGHT AND CREDENCE TO THE TESTIMONY OF MARLA VALERIANO;
- THE TRIAL COURT GRAVELY ERRED IN FINDING CONSPIRACY AMONG THE ACCUSED-APPELLANTS;
- THE TRIAL COURT GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANTS GULTY BEYOND REASONABLE DOUBT OF ROBBERY WITH HOMICIDE INSTEAD OF HOMICIDE ONLY.

Arguments

Appellants claim that the trial court erred in basing their conviction on Marla's testimony contending that Marla could not have positively identified them because she was traumatized and shocked at that time. They also aver that the place was illuminated only by moonlight and Marla admitted that she was not able to recognize them due to the distance and the darkness of the night. They claim that Marla was not able to recognize the faces of Pulbos and Paliman as in fact the cartographic artist was not able to draw their faces and when asked as to where the other two men were, Marla testified that she did not notice them as she was afraid. Appellants also contend that there is no evidence of conspiracy and that the trial court erred in finding that the crime committed was robbery with homicide instead of homicide only.

The Office of the Solicitor General counters that Marla positively identified the accused as the perpetrators and conspiracy was shown.

RULING

The appeal is without merit.

Evidence to be believed, must not only proceed from the mouth of a credible witness, but it must be credible in itself – such as the common experience and observation of mankind can approve as probable under the circumstances. We have no test of the truth of human testimony, except its conformity to our knowledge, observation, and experience. Whatever is repugnant to these belongs to the miraculous and is outside of judicial cognizance.[6]

In resolving issues pertaining to the credibility of the witnesses, this Court is guided by the following principles: (1) the reviewing court will not disturb the findings of the lower courts, unless there is a showing that it overlooked or misapplied some fact or circumstance of weight and substance that may affect the result of the case; (2) the findings of the trial court on the credibility of witnesses are entitled to great respect and even finality, as it had the opportunity to examine their demeanor when they testified on the witness stand; and (3) a witness who testifies in a clear, positive and convincing manner is a credible witness.[7]

We find no merit in the contention of appellants that Marla could not have recognized her and Ian's assailants because the place was illuminated only by moonlight. It has been ruled that moonlight is sufficient illumination for a person to identify another.[8] The amount of light emitted by the moon is relative. While there are evenings of pitch darkness, there are moonlit nights when the brightness of the moon is sufficient to enable one to see distinct details of objects.[9] Marla categorically stated that she was able to recognize her and Ian's assailants by the moonlight and she narrated the specific participation of each of them. She testified that Lopez poked a knife at her; Pulbos stood guard while the others were looking for the car key; Del Rosario wielded a gun; and Paliman threatened her, saying, “Huwag kang maarte at papatayin talaga kita.”[10]

Neither is there merit in the contention of appellants that Marla could not have recognized her and Ian's attackers because she was in a state of shock and traumatized. The evidence shows that Marla was not entirely paralyzed by fear as accused would like us to believe. She showed presence of mind as she groped for anything that she could defend herself with and feigned losing consciousness to mislead her assailants. Instead of dulling her senses, the violence that attended the crime enhanced them. Thus, it has been held that experience shows that precisely because of the unusual acts of ferocity perpetrated before their eyes, eyewitnesses can remember with a high degree of reliability the identity of criminals whose faces would in the very nature of things, have been forcefully impinged upon and etched into their memories.[11] That the identities of the appellants were etched into Marla's mind is shown by the fact that she was able to immediately describe the appearance of two of them to the cartographic artist. Further, as correctly observed by the trial judge, Marla's testimony is “not only consistent in

all material respects but also replete with every detail of the gruesome crime committed against her and the deceased.”[12] Like the trial court, we have every reason to give full weight and credence to the testimony of Marla.

We sustain the finding of the trial court that the crime committed was robbery with homicide as defined and penalized under Articles 293 and 294 of the Revised Penal Code, which read:

Article 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 against or intimidation of any person, or using force upon anything shall be guilty of robbery.

Article 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; or when the robbery shall have been accompanied by rape or intentional mutilation or arson; xxxx

For an accused to be convicted of robbery with homicide, these elements must be proved: 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 *animo lucrandi*; and 4) by reason of the robbery or on the occasion thereof, homicide is committed.[13]

In robbery with homicide, the original criminal design of the malefactor is to commit robbery, with homicide perpetrated on the occasion or by reason of thereof. [14] In this case, the prosecution's evidence has shown that the original criminal design of the appellants was to commit robbery. The appellants did not know the victims and they would not have had any personal motive to kill any of them. Their purpose was simply to rob their victims as in fact they rummaged through their personal belongings when they got inside the car. The killing of Ian was clearly committed on the occasion of the robbery.

Contrary to the contention of appellants, conspiracy was shown by the evidence. Overt acts in furtherance of conspiracy may consist in actively participating in the commission of the act, in lending moral assistance to his co-conspirators, by being present at the scene of the crime, in exerting moral ascendancy over the rest of the conspirators as to move them to executing the conspiracy.[15] When homicide is committed by reason or on the occasion of robbery, all those who took part as principals in the robbery would also be held liable as principals of the single and indivisible felony of robbery with homicide, although they did not actually take part in the killing, unless it clearly appears that they endeavored to prevent the same.[16] In this case, all the accused committed overt acts in furtherance of the conspiracy. To reiterate, Marla testified that Lopez poked a knife at her, Pulbos stood guard as the others did their part, Del Rosario wielded a gun, and Paliman threatened Marla, saying: “Huwag kang maarte at papatayin talaga kita.” The accused were clearly motivated by the same criminal design, acted on it and helped each other in accomplishing it. Common design is the essence of conspiracy—conspirators may act separately or together, in different manners but always leading to the same unlawful result.[17]

We cannot give credence to accused's defense of denial and alibi. Accused uniformly claimed that they were in their respective homes when the crime was committed. They neither presented witnesses to corroborate their alibi nor proved that it was physically impossible for them to be at the scene of the crime when it was committed. Basic is the rule that for alibi to prosper, the accused must prove that he was somewhere else when the crime was committed and it was physically impossible for him to have been at the scene of the crime. Physical impossibility refers to the distance between the place where the accused was when the crime transpired and the place where it was committed as well as the facility of access between the two places.[18] Considering that they were only about

a couple of kilometers away from the scene of the crime, appellants' alibis cannot be sustained. Alibi and denial, if not substantiated by clear and convincing evidence, are negative and self-serving evidence undeserving of weight in law. They are considered with suspicion and always received with caution not only because they are inherently weak and unreliable but also because they are easily fabricated and concocted.[19]

Concerning the penalty, the special complex crime of robbery with homicide is penalized, under Article 294, paragraph 1 of the Revised Penal Code, with reclusion perpetua to death.[20] In view of the absence of any aggravating or mitigating circumstance, the trial court correctly imposed the penalty of reclusion perpetua on the accused.[21] However, the trial court erred in stating the penalty as “forty (40) years of reclusion perpetua.” The penalty of reclusion perpetua is an indivisible penalty that has no period.[22]

The award of actual damages for loss of earning capacity must be modified. The rule is that documentary evidence should be presented to substantiate loss of earning capacity.[23] By way of exception, damages for loss of earning capacity may be awarded despite the absence of documentary evidence when: (1) the deceased is self-employed and earning less than the minimum wage under current labor laws, in which case, judicial notice may be taken of the fact that in the deceased's line of work, no documentary evidence is available; or (2) the deceased is employed as a daily wage worker earning less than the minimum wage under current labor laws.[24]

In this case, there was no documentary evidence of the actual income of the deceased. Following the ruling in *People v. Singh* and *People vs. Almedilla*,[25] where the prosecution fails to present sufficient evidence of the deceased's income, temperate damages in the amount of P300,000.00[26] may be awarded in lieu of actual damages for loss of earning capacity. Civil indemnity ex delicto in the amount of P50,000.00 must also be awarded.[27]

Finally, pursuant to the ruling in *Nacar v. Gallery Frames*,[28] all the damages awarded, both to Marla Valeriano and the heirs of Ian Macamay, shall be subject to 6% per annum from finality of the judgment of conviction until fully paid.

WHEREFORE, the appeal is DENIED. The Decision dated June 24, 2010 of the Regional Trial Court of Cabanatuan City, Branch 27 in Crim. Case No. 15196, is AFFIRMED with the following MODIFICATIONS: 1) the penalty shall simply be reclusion perpetua; 2) appellants shall pay, jointly and severally, to the heirs of the victim Ian Macamay the following: a) temperate damages in the amount of P300,000.00 in lieu of the P439,200.00 awarded by the trial court as loss of earning capacity; b) the additional amount of P50,000.00 as civil indemnity ex delicto; and c) interest of 6% per annum on all the damages awarded from finality of the judgment of conviction until fully paid. The judgment of the trial court in all other respects shall stand.

SO ORDERED.

Dimaampao, J., Chairperson, and Diamante, JJ., concur.

[1] Rollo, pp. 9-25.

[2] Records, pp. 10-11.

[3] Penned by Presiding Judge Angelo C. Perez.

[4] Records., p. 212.

[5] Id., p. 215.

[6] *People v. Mirandilla, Jr.*, G.R. No. 186417, July 27, 2011, citing *Daggers v. Van Dyck*. See concurring

opinion of Associate Justice Conchita Carpio Morales in *Lejano v. People*, G.R. No. 176389, 14 December 2010 citing 37 N.J. Eq. 130, 132.

[7] *Estioca v. People*, G.R. No. 173876, 27 June 2008, 556 SCRA 300.

[8] *People v. Villaruel*, 261 SCRA 386 (1996).

[9] *People v. Prades*, 293 SCRA 411 (1998).

[10] TSN, December 14, 2005, p. 35.

[11] *People v. Bergonio*, G.R. No. 133981. September 13, 2000, citing *People vs. Teehankee, Jr.*, 249 SCRA 54 (1995).

[12] RTC decision, p. 17, *supra* at note 1.

[13] *People v. De Jesus*, G.R. No. 134815, May 27, 2004, 429 SCRA 384 citing *People v. Pedroso*, 391 Phil. 43, 56 (2000).

[14] *People v. Salazar*, G.R. No. 99355, August 11, 1997, 277 SCRA 67.

[15] *People v. Berroya*, 283 SCRA 111 (1998).

[16] *People v. Carrozo*, 324 SCRA 600 (2000).

[17] *Preferred Home Specialties, Inc. v. Court of Appeals*, 478 SCRA 307 (2005).

[18] *People v. Delim*, G.R. No. 175942, September 13, 2007, 533 SCRA 366, 379.

[19] *People v. Togahan*, G.R. No. 174064, June 8, 2007, 524 SCRA 557, 573-574.

[20] *People v. Buyagan*, G.R. No. 187733, February 8, 2012.

[21] *People v. Diu*, G.R. No. 201449, April 3, 2013.

[22] *People v. Lucas*, 232 SCRA 537.

[23] *Philippine Hawk Corporation v. Lee*, G.R. No. 166869, February 16, 2010.

[24] *Licyayo v. People*, G.R. No. 169425, March 4, 2008, 547 SCRA 598.

[25] *People v. Singh*, 412 Phil. 842 (2001) and *People v. Almedilla*, 409 SCRA 428 (2003).

[26] *Tan v. OMC Carriers, Inc.*, G.R. No. 190521, January 12, 2011.

[27] *People v. Diu*, *supra* at note 21.

[28] G.R. No. 189871, August 13, 2013

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