

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JAIME MACABALES Y CASIMIRO @ &#8220;JAIME CEREZA Y CASIMIRO AND JAIME MACABALES Y CEREZA,&#8221; ABNER CARATAO Y SANCHEZ, ROMANO REYES Y C...**

*G.R. No. 111102. December 08, 2000*

Ponente: QUISUMBING, J.

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**QUISUMBING, J.:**

On appeal is the decision[1] dated March 25, 1993 of the Regional Trial Court of Makati City, Branch 56, in Criminal Case No. 1669, finding accused-appellants Jaime Macabales, Abner Caratao, Romano Reyes, Marcelino Tuliao and Renato Magora guilty of the crime of attempted robbery with homicide and sentencing each of them to suffer the penalty of reclusion perpetua.

In an Information dated March 28, 1990, said appellants and Richard De Luna, a minor, were charged as follows:

That on or about the 13th day of March, 1990, in the Municipality of Makati, Metro Manila, Philippines a place within the jurisdiction of this Honorable Court, the above-named accused, while armed with [a] fan knife, with intent of gain and by means of force, violence and intimidation, conspiring and confederating together and mutually helping and aiding one another, did then and there willfully, unlawfully and feloniously grab, steal and carry away the brown leather bag containing the following items, to wit:

Cash money -- -- -- P5,000.00

Three (3) Seiko Wrist

Watches -- -- -- 6,000.00

Pair of Earring[s] -- -- -- 1,000.00

all in the total amount of P12,000.00 belonging to Eva Katigbak, to the damage and prejudice of the latter in the aforementioned amount of P12,000.00, while the said complainant Eva Katigbak was waiting for a ride along Ayala Avenue corner Herrera Street which is a Philippine highway; that as a result or on the occasion of the said robbery, the said accused, conspiring and confederating together and mutually helping and aiding one another, with intent to kill, did then and there willfully and feloniously stab Miguel Katigbak, a brother of Eva Katigbak, as a result of which the said victim suffered mortal and serious stab wounds which directly caused his death.

That in the commission of the said crime, the aggravating circumstance of use of motor vehicle was present.

CONTRARY TO LAW.[2]

Arraigned on May 23, 1990,[3] the accused pleaded not guilty. Trial thereafter ensued. However, during the trial only Abner Caratao, Romano Reyes, Marcelino Tuliao, Renato Magora and Richard De Luna[4] were present in person. Jaime Macabales jumped bail and has remained at large. He was tried in absentia.

On March 25, 1993, the trial court rendered its decision, finding appellants guilty of the special complex crime of attempted robbery with homicide. In said decision, however, the trial court suspended the imposition and promulgation of the sentence on accused Richard De Luna, who was under eighteen (18) years of age at the time the crime was committed. The dispositive portion[5] of said judgment reads:

WHEREFORE, finding accused Jaime Macabales, Abner Caratao, Romano Reyes, Marcelino Tuliao and Renato Magora guilty beyond reasonable doubt of having committed the offense of attempted robbery with homicide, defined and penalized under Art. 297 of the Revised Penal Code, there being (the) aggravating circumstances of treachery and the use of motor vehicle and no mitigating circumstance that attended the commission of the offense, they are hereby sentenced to suffer the penalty of reclusion perpetua and to pay jointly and severally the heirs of Miguel Katigbak the sum of P50,000.00 for the loss (sic) of his life and another sum of P50,000.00 for moral damages, and to pay the costs of the suit.

X X X

Considering that accused Richard de Luna was at the time of the commission of the offense only fifteen years, nine months and six days and classified as a youthful offender, pursuant to Art. 192 of Presidential Decree No. 603, otherwise known as the Child and Youth Welfare Code, the imposition and promulgation of the sentence on him is hereby suspended and he is committed to the custody and care of the Rehabilitation Center of the Department of Social Services and Development at the Boy's Town Vicente Madrigal, Tanay, Rizal, until he reaches the age of twenty-one or a shorter period depending on the report and recommendation of the Department of Social Services and Development.

X X X

SO ORDERED.

Appellants herein seasonably interposed their appeal. However, since Jaime Macabales had jumped bail, this Court in its resolution dated January 17, 1990, dismissed his appeal. We are now concerned only with the appeal of Caratao, Reyes, Tuliao, Magora and De Luna.

The facts, as narrated by the Solicitor General, are as follows:

On the night of March 13, 1990, about 8:00 P.M., Marine Captain Miguel Katigbak and his sister, Eva Katigbak, were heading towards the Makati Commercial Center (along Pasong Tamo Street) for a late night shopping and dinner. They were waiting for a ride in the corner of Ayala Avenue and Herrera Street in Makati, Metro Manila. A passenger jeepney slowly approached them. When it was directly in front of them, one of the occupants, namely accused Jaime Macabales, grabbed the handbag Eva was carrying. Eva helped by his brother, held on to her bag as Macabales pulled it. The strap snapped, and the bag fell on the pavement. While Eva tried to retrieve the bag, the jeepney stopped and its occupants -- Reyes, Magora, Tuliao, De Luna and Macabales and Caratao -- all alighted and accosted Miguel and Eva. Miguel, who was skilled in martial arts, threw down the three attackers. The two others joined the fray and held the arms of Miguel, immobilizing and rendering him defenseless. Macabales, who had not joined the initial assault, suddenly pulled out a knife and stabbed Miguel repeatedly on the chest. The group boarded the jeepney and sped in the direction of Makati Avenue, leaving the severely wounded Miguel clutching his chest.

Still in shock, Eva went to his aid. She laid him down on the pavement and looked for a phone booth to call another brother, Jerry Katigbak, whose condominium was nearby. It took several minutes to make the call as the guard of the bank fronting the crime scene refused her entrance and locked the bank doors instead. As she came out of the PT & T office where she made the call, she saw that some passers-by loaded her brother in a taxi. She boarded the taxi and accompanied her brother to the Makati Medical Center. Miguel died a few minutes after they

arrived at the hospital.[6]

The prosecution evidence included the testimony of Pfc. Eduardo Guadalupe, who testified that while manning traffic along the corners of Pasong Tamo and Pasay Road in Makati, a taxi with Patrolman William Binalla on board stopped at his post and requested assistance to pursue several suspects reportedly on board a passenger jeepney. After a brief chase, they overtook the passenger jeepney along Buendia Avenue. Pat. Binalla fired a warning shot and ordered the suspects to alight and lie down the road. As accused Macabales alighted, a fan knife fell from him. Pfc. Guadalupe picked the knife and noticed it was sticky. The officers told the suspects to board the jeepney, and ordered the driver to proceed to the police station. While on the way to the station, Guadalupe asked who owned the bloodied knife, and accused Macabales admitted owning it.[7]

Dr. Maximo Reyes, a medico-legal officer at the NBI, who conducted the post-mortem examination and caused the preparation of the autopsy report, testified that Miguel sustained a stab wound in his middle back penetrating to his left chest and two more in his stomach. Two of the wounds were fatal and these could have been caused by two or more bladed instruments.[8]

The defense, for its part, understandably presented a different version.

According to Romano Reyes on March 13, 1990, after his work at 5:00 P.M., he proceeded to the house of his relative Leticia Jimena, at Davila Street because he would be meeting his foreman, Virgilio Encarnacion, to get his salary from him. The house of his relative was just 150 meters away from his own house. While he was waiting, a friend named Benjamin Santiago, whose house was nearby, ordered three bottles of beer to drink. They finished drinking between 6:00 and 7:00 P.M. The person he was waiting for did not arrive. Because he was drunk, he rested in a jeepney owned by Tuliao which was parked in front of the house of Santiago. He stretched out on the seat inside the jeepney. Later on, the driver woke him up because the jeepney would be used in bringing the guests of Tuliao to Ayala Avenue. He asked to be allowed to continue his sleep and go with them. When the jeepney left Davila Street, he went on sleeping until a shot at Pasong Tamo woke him. The policeman informed them that one of their companions stabbed somebody at the corner of Ayala Avenue and Herrera Street. They were brought to the police headquarters. He also admitted that Macabales and he were members of Sputnik gang, and he knew all of the accused because they all resided at Davila Street. He denied alighting from the jeepney at Ayala Avenue with the other accused who ganged up on the victim. He did not talk with the other accused inside the jeepney as he was asleep. He did not see nor notice Roger Paloma inside the jeepney.

Benjamin Santiago corroborated the story of Reyes. He said that after Reyes slept in the jeepney he did not see Reyes again because he himself went inside his house and slept. He knew Tuliao, Magora and the other accused. He said Reyes and he were not with the accused that evening.

Renato Magora testified that Tuliao was the owner of the jeepney he was driving. Paloma was a guest of Tuliao the night of the crime. The latter could not drive his jeepney at that time because he was not well, so he asked Magora to bring Paloma to the terminal along Ayala Avenue. Inside the jeepney were Macabales, Caratao, De Luna, Reyes, Tuliao and Magora. He said he did not know why the others were there. Between the hours of 6:00 P.M. and 7:00 P.M. they drove along Ayala Avenue. A man and a woman flagged down the jeepney, but he decided not to pick-up passengers because one of his companions, Caratao, was lying in the jeepney without clothes on. He slowed down the jeepney because there were people crossing the street. Tuliao heard a man utter 'Bastos.' Angered, Tuliao got off the jeepney. Tuliao accosted the man. Later Tuliao returned and told him to drive on because the man was a marine captain. He did not know if Tuliao and the man had a fight. He did not see Macabales get off the jeepney. It was only when the jeepney was moving that he saw Macabales running after them. Macabales caught up and sat behind Luna and him. They drove to Ayala Avenue and turned right to Makati

Avenue. Macabales kept transferring from one seat to the other. He did not have any idea why. There was no taxi tailing the jeepney. At Goldilocks, someone flagged them, but he did not stop because he was not picking up passengers and Macabales poked a sharp object at him and told him to continue driving. It was only then that he felt nervous. He did not notice any policeman who flagged them to stop. They proceeded to Buendia Avenue. A taxi blocked their way in the intersection. He heard warning shots and he stopped driving. He asked the policeman what the problem was and he even gave his driver's license. They all got off the jeepney. When Macabales was frisked by the police, a knife fell from him. He did not see Macabales holding a knife inside the jeepney, although Macabales did point something on his body. Macabales admitted owning the knife. At the police headquarters Macabales admitted that he was the one who stabbed the victim. Magora said he did not notice where Paloma alighted. He also denied any participation in the mauling and stabbing of the victim.[9]

Marcelino Tuliao testified that at about 6:00 P.M. on March 13, 1990, he was at his house with Rey Magora and Roger Paloma who repaired his gas stove. After the repair, he asked Magora to drive Rey and Roger to their homes in the jeepney. De Luna, Caratao, Reyes and Macabales rode with them. At the corner of Ayala Avenue and Herrera Street, he saw persons stopping their jeepney. He heard somebody shout "Bastos." He told Magora to stop and he went to find out who shouted. The others in the jeepney did not alight. When he learned that the man was a marine captain whom he later came to know as Miguel Katigbak, he went back to the jeepney. When he looked back, he saw Macabales and Katigbak fighting. Macabales was holding a knife. While the fight was going on, he and Magora were in the front seat of the jeepney. The others were at the back seats. He did not see any of them help Macabales. When Macabales returned to the jeepney, he instructed Magora to drive on. Tuliao said he did not look back again because he was worried and afraid that the police might apprehend them. The jeepney went straight along Ayala Avenue. He could not remember where the jeepney turned because he was drunk. At Pasong Tamo, they were blocked by the police and warning shots were fired. He was afraid of being caught. He saw the knife when it fell from Macabales. It was picked up by Pat. Guadalupe. They were brought to the police precinct. A woman pointed to Macabales as the one who stabbed the deceased.[10]

In their appeal, Magora, Tuliao and De Luna assign the following errors:

- THAT THE TRIAL COURT ERRED IN FINDING THAT THERE WAS CONSPIRACY TO COMMIT THE CRIME CHARGED AMONG ACCUSED-APPELLANTS;
- THAT THE TRIAL COURT ERRED IN APPLYING THE PROVISIONS OF THE REVISED PENAL CODE TO THE OFFENSE CHARGED WHICH IS DEFINED AND PUNISHABLE BY A SPECIAL LAW;
- THAT THE TRIAL COURT ERRED IN APPRECIATING THE AGGRAVATING CIRCUMSTANCE OF TREACHERY IN THE CONVICTION OF ACCUSED-APPELLANTS.[11]

Appellant Romano Reyes, on the other hand, assigns the following errors:

- THAT THE TRIAL COURT ERRED IN HOLDING THAT ACCUSED ACTED IN CONSPIRACY WITH THE OTHER ACCUSED;
- THAT THE TRIAL COURT ERRED IN FINDING ACCUSED GUILTY BEYOND REASONABLE DOUBT OF HAVING COMMITTED THE CRIME OF ATTEMPTED ROBBERY WITH HOMICIDE.[12]

First, appellants fault the trial court's conclusion that there was conspiracy among appellants. They aver that Eva Katigbak's testimony does not establish conspiracy among appellants. Second, they assert that, court a quo erred in convicting them of robbery with homicide under Article 297 of the Revised Penal Code, considering that the Information charged them with Highway Robbery with Homicide under a special law, P.D. No. 532.

Primarily, they question the credibility of Eva Katigbak. Eva testified that Reyes, Magora and Tuliao admitted

that the three of them, together with Macabales, Caratao, and De Luna were present at the time and at the scene of the commission of the offense; that they were all together in the same jeepney when they fled from the scene of the crime until they were apprehended by the police; and that Macabales stabbed Miguel, while two of the accused were holding his arms and the three with whom Miguel fought were surrounding him. We find no reason, however, why Eva should lie in implicating all the accused. We find her testimony straight-forward, unhesitating and sincere. Between the self-serving testimonies of the accused and the positive identification of the assailants made by the prosecution witness, the latter deserves greater credence.[13]

The medico-legal officer found that five frontal stab wounds could not have been successfully inflicted by Macabales on Miguel, who was a marine captain and supposedly knowledgeable about the art of self-defense, if Macabales was not assisted by his companions. The concerted action in attacking Miguel as narrated by Eva is an indication that the perpetrators knew beforehand what to do. The coordinated actions they executed showed conspiracy among them. Settled is the rule that conspiracy need not be proved by direct evidence of prior agreement on the commission of the crime,[14] as this could be inferred from the conduct of the accused before, during and after the commission of the crime, showing that accused acted in unison with each other, evidencing a common purpose.[15] Even if there was no direct proof of appellants' previous agreement to kill the victim, their individual acts when massed together, clearly manifested that they were acting in concert. They helped one another kill Miguel, and they left together after accomplishing their deed.

In a number of cases we have ruled that when homicide takes place as a consequence of or on the occasion of the robbery, all those who took part in the robbery are liable as principals by indispensable cooperation although they did not actually take part in the homicide unless proof could be adduced that anyone of the appellants tried to prevent the killing.[16] In point of law, the act of one is the act of all and it does not matter who among the accused actually inflicted the injury upon the victim.[17]

Appellants assert that the court a quo erred in applying Article 297 of the Revised Penal Code, in convicting them, as the crime they are charged is punishable by a special law, P. D. No. 532.

The Information charged appellants with Highway Robbery with Homicide under P.D. No. 532 which reads:

Sec. 2. (e) Highway Robbery/Brigandage - The seizure of any person for ransom, extortion or other unlawful purposes, or the taking away of the property of another by means of violence against or intimidation of persons or force upon things or other unlawful means, committed by any person on any Philippine highway.

Sec. 3. (b) The penalty of reclusion temporal in its minimum period shall be imposed. If physical injuries or other crimes are committed during or on the occasion of the commission of the robbery or brigandage, the penalty of reclusion temporal in its medium and maximum periods shall be imposed. If kidnapping for ransom or extortion, or murder or homicide, or rape is committed as a result or on the occasion thereof, the penalty of death shall be imposed.

Article 297, Revised Penal Code provides:

When by reason or on occasion of an attempted or frustrated robbery a homicide is committed, the person guilty of such offense shall be punished by reclusion temporal in its maximum period to reclusion perpetua, unless the homicide committed shall deserve a higher penalty under the provisions of this Code.

Sec. 4 and 5 of Rule 120 of the Rules on Criminal Procedures is likewise pertinent. It reads:

Sec. 4 Judgment in case of variance between the allegation and proof - When there is a variance between the offense charged in the complaint or information, and that proved or established by the evidence, and the offense as charged is included in or necessarily includes the offense proved, the accused shall be convicted of the offense proved included in that which is charged, or of the offense charged included in that which is

proved.

Sec. 5 When an offense includes or is included in another - An offense charged necessarily includes that which is proved, when some of the essential elements or ingredients of the former, as this is alleged in the complaint or information, constitutes the latter. And an offense charged is necessarily included in the offense proved, when the essential ingredients of the former constitutes or form a part of those constituting the latter.

In our view, the trial court was correct in convicting appellants of the crime of attempted robbery with homicide under Article 297 of the Revised Penal Code. Appellants may be convicted for a crime other than that designated by the formal charge. When there is a variance between the offense charged and the offense proved, the defendant may be convicted of the offense proved if it is included in the offense charged. Likewise, he may be convicted of the offense charged if it is included in the offense proved. It is not necessary that all the essential elements of the offense charged in the information be proved. It is sufficient that some of the essential elements are established, to constitute the crime proved. The elements of Robbery with Homicide as defined in Art. 297 of the Revised Penal Code are: (1) There is an attempted or frustrated robbery. (2) A homicide is committed. Both elements are among the elements of Highway Robbery with Homicide under P.D. 523 and were duly proved in this case.

Additionally, in the interpretation of an information, what controls is not the designation but the description of the offense charged.[18] Considering the allegations of the aforementioned Information, appellants should be liable for the special complex crime of attempted robbery with homicide under Article 297 of the Revised Penal Code, since the homicide committed during a robbery attempt was proved beyond reasonable doubt. Likewise the use of a motor vehicle, a jeepney, by appellants during the commission of the offense has been established beyond dispute.

Finally, appellants contend that the trial court erred in concluding that the aggravating circumstance of treachery is present. They aver that treachery applies to crimes against persons and not to crimes against property. However, we find that the trial court in this case correctly characterized treachery as a generic aggravating, rather than qualifying, circumstance. Miguel was rendered helpless by appellants in defending himself when his arms were held by two of the attackers before he was stabbed with a knife by appellant Macabales, as their other companions surrounded them. In *People v. Salvatierra*, [19] we ruled that when alevosia (treachery) obtains in the special complex crime of robbery with homicide, such treachery is to be regarded as a generic aggravating circumstance. Robbery with homicide is a composite crime with its own definition and special penalty in the Revised Penal Code. There is no special complex crime of robbery with murder under the Revised Penal Code.[20] Here, treachery forms part of the circumstances proven concerning the actual commission of the complex crime. Logically it could not qualify the homicide to murder but, as generic aggravating circumstance, it helps determine the penalty to be imposed.

WHEREFORE, the decision of the Regional Trial Court of Makati City dated March 25, 1993 is AFFIRMED. Appellants Abner Caratao, Romano Reyes, Marcelino Tuliao and Renato Magora are found GUILTY beyond reasonable doubt of the crime of attempted ROBBERY WITH HOMICIDE and sentenced to suffer the penalty of RECLUSION PERPETUA. Considering that Richard De Luna was a minor at the time of the commission of the offense and the imposition and promulgation of his sentence was suspended, let the records of this case be remanded to the trial court for appropriate action concerning said accused. Costs against appellants.

### **SO ORDERED.**

Bellosillo, (Chairman), Mendoza, Buena, and De Leon, Jr., JJ., concur.

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[1] Rollo, pp. 14-35.

- [2] Records, pp. 1-2.
- [3] Ibid., p. 24.
- [4] Also referred to as Ricardo De Luna in RTC Decision and Appellants Brief.
- [5] Rollo, pp. 33-35.
- [6] TSN, June 19, 1990, pp. 11-14.
- [7] TSN, May 10, 1991, pp. 6-19.
- [8] TSN, November 21, 1990, pp. 9-14.
- [9] Exh. "1" and Exhs. "F", "F-1", par. 1, Records pp. 303-304.
- [10] Rollo, pp. 20-26.
- [11] Id. at 128-128-A. Caratao filed no brief, despite notices to counsel.
- [12] Id. at 70-71.
- [13] People v. De Castro, 252 SCRA 341, 351 (1996); People v. Lamsing, 248 SCRA 471 (1995).
- [14] People v. Layno, 264 SCRA 558, 575 (1996); People v. Jain, 254 SCRA 686 (1996).
- [15] People v. Cordero 263 SCRA 122, 138 (1996); People v. Sotes, 260 SCRA 353 (1996).
- [16] People v. Pareja, 265 SCRA 429, 442 (1996); People v. Sandoval, 254 SCRA 436 (1996).
- [17] People v. Sequiño, 264 SCRA 79, 102 (1996); People v. Cantre, 186 SCRA 76, 81 (1990).
- [18] People v. Mendoza, 254 SCRA 61, 80 (1996); People v. Sandoval, 254 SCRA 436, 452 (1996).
- [19] People v. Salvatierra, 257 SCRA 489, 507 (1996) citing, People v. Repato, 91 SCRA 488 (1979); U.S. v. Antonio, 31 Phil 205 (1915).
- [20] People v. Vivas, 232 SCRA 238, 242 (1994).

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