

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. LARRY LAURENTE Y BEJASA, MELVIN DAGUDOG, AND RICHARD DISIPULO, ACCUSED. LARRY LAURENTE Y BEJASA, ACCUSED-APPELLANT.

G.R. No. 116734. March 29, 1996

Ponente: DAVIDE, JR., J.

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DAVIDE, JR., J.:

This is a case for our automatic review[1] in view of the death penalty imposed upon accused-appellant Larry Laurente (hereinafter Laurente).

In a decision[2] promulgated on 23 August 1994 in Criminal Case No. 104785, the Regional Trial Court (RTC) of Pasig, Branch 156, found Laurente guilty beyond reasonable doubt of the crime of Highway Robbery with Homicide, defined and penalized under P.D. No. 532,[3] and sentenced him to suffer the penalty of death; to indemnify the heirs of the victim in the amount of P50,000.00, and to pay them P27,300.00 as funeral expenses and P100,000.00 as moral and exemplary damages; and to pay the costs.

We declare at the outset that even granting ex gratia that the established facts prove beyond reasonable doubt that Laurente and his two co-accused indeed committed the acts charged in the information,[4] Laurente cannot be validly convicted for highway robbery with homicide under P.D. No. 532. The object of the decree is to deter and punish lawless elements who commit acts of depredation upon persons and properties of innocent and defenseless inhabitants who travel from one place to another - which acts constitute either piracy or highway robbery/brigandage - thereby disturbing the peace, order, and tranquility of the nation and stunting the economic and social progress of the people.[5] It is directed against acts of robbery perpetrated by outlaws indiscriminately against any person on Philippine highways, as defined therein, and not those committed against a predetermined or particular victim. Accordingly, a robbery committed on a Philippine highway by persons who are not members of the prescribed lawless elements or directed only against a specific, intended, or preconceived victim, is not a violation of P.D. No. 532. This Court, per Mr. Justice Florenz D. Regalado, so held in *People vs. Puno*[6] and a reiteration of the discussion therein is in order. Thus:

Contrary to the postulation of the Solicitor General Presidential Decree No. 532 is not a modification of Article 267 of the Revised Penal Code on kidnapping and serious illegal detention, but of Articles 306 and 307 on brigandage. This is evident from the fact that the relevant portion thereof which treats of "highway robbery" invariably uses this term in the alternative and synonymously with brigandage, that is, as "highway robbery/brigandage." This is but in line with our previous ruling, and which still holds sway in criminal law, that highway robbers (ladrones) and brigands are synonymous.

Harking back to the origin of our law on brigandage (bandolerismo) in order to put our discussion thereon in the proper context and perspective, we find that a band of brigands, also known as highwaymen or freebooters, is more than a gang of ordinary robbers. Jurisprudence on the matter reveals that during the early part of the American occupation of our country, roving bands were organized for robbery and pillage and since the then existing law against robbery was inadequate to cope with such moving bands of outlaws, the Brigandage Law

was passed.

The following salient distinctions between brigandage and robbery are succinctly explained in a treatise on the subject and are of continuing validity:

The main object of the Brigandage Law is to prevent the formation of bands of robbers. The heart of the offense consists in the formation of a band by more than three armed persons for the purpose indicated in Art. 306. Such formation is sufficient to constitute a violation of Art. 306. It would not be necessary to show, in a prosecution under it, that a member or members of the band actually committed robbery or kidnapping or any other purpose attainable by violent means. The crime is proven when the organization and purpose of the band are shown to be such as are contemplated by Art. 306. On the other hand, if robbery is committed by a band, whose members were not primarily organized for the purpose of committing robbery or kidnapping, etc., the crime would not be brigandage, but only robbery. Simply because robbery was committed by a band of more than three armed persons, it would not follow that it was committed by a band of brigands. In the Spanish text of art. 306, it is required that the band "sala a los campos para dedicarse a robar."

In fine, the purpose of brigandage is, inter alia, indiscriminate highway robbery. If the purpose is only a particular robbery, the crime is only robbery, or robbery in band if there are at least four armed participants. The martial law legislator, in creating and promulgating Presidential Decree No. 532 for the objectives announced therein, could not have been unaware of that distinction and is presumed to have adopted the same, there being no indication to the contrary. This conclusion is buttressed by the rule on contemporaneous construction, since it is one drawn from the time when and the circumstances under which the decree to be construed originated. Contemporaneous exposition or construction is the best and strongest in the law.

Further, that Presidential Decree No. 532 punishes as highway robbery or brigandage only acts of robbery perpetrated by outlaws indiscriminately against any person or persons on Philippine highways as defined therein, and not acts of robbery committed against only a predetermined or particular victim, is evident from the preambular clauses thereof, to wit:

WHEREAS, reports from law enforcement agencies reveal that lawless elements are still committing acts of depredation upon the persons and properties of innocent and defenseless inhabitants who travel from one place to another, thereby disturbing the peace, order and tranquility of the nation and stunting the economic and social progress of the people;

WHEREAS, such acts and depredations constitute x x x highway robbery/brigandage which are among the highest forms of lawlessness condemned by the penal statutes of all countries;

WHEREAS, it is imperative that said lawless elements be discouraged from perpetrating such acts and depredations by imposing [a] heavy penalty on the offenders, with the end in view of eliminating all obstacles to the economic, social, educational and community progress of the people; (*Italics supplied.*)

Indeed, it is hard to conceive of how a single act of robbery against a particular person chosen by the accused as their specific victim could be considered as committed on the "innocent and defenseless inhabitants who travel from one place to another," and which single act of depredation could be capable of "stunting the economic and social progress of the people" as to be considered "among the highest forms of lawlessness condemned by the penal statutes of all countries," and would accordingly constitute an obstacle "to the economic, social, educational and community progress of the people," such that said isolated act would constitute the highway robbery or brigandage contemplated and punished in said decree. This would be an exaggeration bordering on the ridiculous.

True, Presidential Decree No. 532 did introduce amendments to Articles 306 and 307 of the Revised Penal Code by increasing the penalties, albeit limiting its applicability to the offenses stated therein when committed on the highways and without prejudice to the liability for such acts if committed. Furthermore, the decree does not

require that there be at least four armed persons forming a band of robbers; and the presumption in the Code that said accused are brigands if they use unlicensed firearms no longer obtains under the decree. But, and this we broadly underline, the essence of brigandage under the Code as a crime of depredation wherein the unlawful acts are directed not only against specific, intended or preconceived victims, but against any and all prospective victims anywhere on the highway and whosoever they may potentially be, is the same as the concept of brigandage which is maintained in Presidential Decree No. 532, in the same manner as it was under its aforementioned precursor in the Code and, for that matter, under the old Brigandage Law.

Erroneous advertence is nevertheless made by the court below to the fact that the crime of robbery committed by appellants should be covered by the said amendatory decree just because it was committed on a highway. Aside from what has already been stressed regarding the absence of the requisite elements which thereby necessarily puts the offense charged outside the purview and intendment of that presidential issuance, it would be absurd to adopt a literal interpretation that any unlawful taking of property committed on our highways would be covered thereby. It is an elementary rule of statutory construction that the spirit of intent of the law should not be subordinated to the letter thereof. Trite as it may appear, we have perforce to stress the elementary caveat that he who considers merely the letter of an instrument goes but skin deep into its meaning, and the fundamental rule that criminal justice inclines in favor of the milder form of liability in case of doubt.

If the mere fact that the offense charged was committed on a highway would be the determinant for the application of Presidential Decree No. 532, it would not be far-fetched to expect mischievous, if not absurd, effects on the corpus of our substantive criminal law. While we eschew resort to a *reductio ad absurdum* line of reasoning, we apprehend that the aforestated theory adopted by the trial court falls far short of the desideratum in the interpretation of laws, that is, to avoid absurdities and conflicts. For, if a motor vehicle, either stationary or moving on a highway, is forcibly taken at gunpoint by the accused who happened to take a fancy thereto, would the location of the vehicle at the time of the unlawful taking necessarily put the offense within the ambit of Presidential Decree No. 532, thus rendering nugatory the categorical provisions of the Anti-Carnapping Act of 1972? And, if the scenario is one where the subject matter of the unlawful asportation is large cattle which are incidentally being herded along and traversing the same highway and are impulsively set upon by the accused, should we apply Presidential Decree No. 532 and completely disregard the explicit prescriptions in the Anti-Cattle Rustling Law of 1974?

We do not entertain any doubt, therefore, that the coincidental fact that the robbery in the present case was committed inside a car which, in the natural course of things, was casually operating on a highway, is not within the situation envisaged by Section 2(e) of the decree in its definition of terms. Besides, that particular provision precisely define[s] "highway robbery/brigandage" and, as we have amply demonstrated, the single act of robbery conceived and committed by appellants in this case does not constitute highway robbery or brigandage. (citations omitted)

In the instant case, there is not a shred of evidence that Laurente and his co-accused, or their acts, fall within the purview of P.D. No. 532, as interpreted above. Thus, to repeat, Laurente cannot be validly convicted for highway robbery with homicide under P.D. No 532.

Assuming further, however, that Laurente and his co-accused may be convicted under P.D. No. 532, the death penalty cannot be legally imposed on Laurente. While it is true that Section 3 of the said decree prescribes the penalty of death for highway robbery with homicide, the imposition of capital punishment was suspended^[7] by Section 19(1), Article III of the 1987 Constitution.^[8]

The reimposition of the death penalty by R.A. No. 7659^[9] did not ipso jure lift the suspension as far as P.D. No.

532 is concerned. An examination of the former reveals that while it specifically imposed the death penalty or restored it for certain crimes,[10] it failed to do so for the latter - in fact, R.A. No. 7659 does not mention P.D. No. 532 at all. Clearly, by failing to squarely deal with P.D. No. 532, Congress is deemed not to have considered highway robbery with homicide a "heinous crime"; or if it did, it found no "compelling reason" to reimpose the death penalty therefor.

Nevertheless, the amended information hereinafter quoted[11] indubitably shows, that except for the emphasis of the place where the robbery was committed, i.e., a highway, the charge is actually for robbery with homicide as defined and penalized under Article 294(1) of the Revised Penal Code. This provision now reads, as amended by Section 9 of R.A. No. 7659:

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, or when the robbery shall have been accompanied by rape or intentional mutilation or arson x x x.

Simply, the information remains a valid information for robbery with homicide under the above provision. The investigating prosecutor's characterization that it was for highway robbery with homicide is of no moment. On the matter of an accused's right to be informed of the nature and cause of the accusation,[12] it is elementary that what determines the offense charged is not the characterization made by the prosecutor who prepared the information, but the allegations in the indictment.[13]

Accordingly, on the assumption that the prosecution established beyond reasonable doubt all the elements of robbery and of homicide committed on the occasion thereof, Laurente can nevertheless be meted the penalty of death under Article 294(1) of the Revised Penal Code, as amended by R.A. No. 7659, since the crime was committed on 14 February 1994, or one month and thirteen days after the effectivity of R.A. No. 7659. But whether the prosecution in fact discharged its burden is an entirely different matter which goes into the merits of this appeal.

We shall then turn our attention to the appeal proper.

In an information[14] dated 17 February 1994 and filed with the trial court on 21 February 1994, Laurente was charged with the crime of Highway Robbery with Homicide. The information was later amended to include his co-accused, Melvin Dagudog and Richard Disipulo. The indictment in the amended information read as follows:

That on or about the 14th day of February, 1994 in the Municipality of Pasig, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together with Melvin Dagudog and Richard Disipulo, who are still at large, and all of them mutually helping and aiding one another, with intent of [sic] gain and by means of force, violence and intimidation, did then and there willfully, unlawfully and feloniously take, rob and divest from Herminiano G. Artana of his earnings in and [sic] undetermined amount along F. Concepcion St., Bgy. San Joaquin, Pasig, Metro Manila, which is a Philippine Highway; that on the occasion of the said robbery and for the purpose of enabling them to take, divest and carry away the said money, in pursuance of their conspiracy and for the purpose of insuring success of their criminal act, said accused did then and there willfully, unlawfully and feloniously strangle said victim with a leather belt and hit him with a blunt instrument, causing him to sustain physical injuries which directly caused his death.

CONTRARY TO LAW.[15]

Laurente was taken into custody on 15 February 1994,[16] but his two co-accused have remained at large. The

case then proceeded as against Laurente only.

Upon arraignment, with the assistance of counsel de oficio, Laurente entered a plea of not guilty.[17] At trial on the merits, the prosecution presented four witnesses, namely: (1) SPO1 Crispin Pio, the investigating/arresting officer; (2) eyewitness Myra Guinto; (3) Felicitas Matematico, the victim's daughter; and (4) Dr. Emmanuel Arañas, the medico-legal officer of the Philippine National Police (PNP) Crime Laboratory Services, who performed the autopsy on the victim. The prosecution attempted to present the other eyewitness, Noel Guinto (Myra's brother-in-law), but despite the issuance of a warrant for his arrest and the trial court's grant of one last chance to present him, the prosecution was unable to do so.[18]

SPO1 Crispin Pio testified that on 14 February 1994, while on duty as a homicide investigator at the Pasig Police Station, he received a case assignment relative to one Herminio Artana. He proceeded to the place of the incident, which was just a few meters away from the exit gate of the Capitol Compound in Pasig. Upon arrival, he saw a parked taxicab and looked inside it. He saw a dead man, who, he supposed, was the taxicab driver. Pio recalled that the taxicab was an "Adet taxi," but he forgot its plate number.[19]

At such time, Pio asked the Guinto siblings-in-law and other persons present about the incident, but gained no meaningful information from them. He conducted a "cursory investigation" and saw that the body "sustained strangulation marked [sic] and wounds on the face and head," thus he sent the body to the PNP Crime Laboratory for examination. He then conducted a "crime scene search inside the taxicab and within the vicinity," which yielded a "colored brown wallet containing an SSS [Social Security System] ID of x x x Larry Laurente" and "a leather belt supposedly used in strangling the dead man." [20]

Pio took the articles, went to the police station to make an incident report, and "requested the SSS to secure the complete record" of Laurente. From the SSS records, the police authorities learned that Laurente lived "somewhere in Kalawaan Sur, Pasig"; accordingly, a "follow-up" team was formed to arrest him.[21]

Pio further testified that on 15 February 1994, the "follow-up" team arrested and brought Laurente to the police station for investigation, and that during the investigation, after having been apprised of his constitutional rights, Laurente:

[V]erbally admitted that he together with his friend[s] Richard and Melvin boarded the taxicab and they grabbed the taxicab driver and after which they strangled [sic] the driver with the use of [the] belt while Melvin hit the taxi driver with the used [sic] of a blunt instrument at the head and face.[22]

Thereafter, Laurente was "put under [sic] police line-up wherein the 2 witnesses positively identified him as one of the 3 persons they saw coming from the taxicab." Pio was present during the conduct of the police line-up and, under his and his superior's [23] supervision, he had the line-up photographed (Exhibits "D" and "D-1"). [24]

Pio next took the statements of the witnesses (Exhibits "F" and "G") [25] and the complainant (Exhibit "E"), [26] proceeded to make his report (Exhibit "I"), [27] executed an affidavit (Exhibit "H") [28] attesting to the conduct of the investigation and arrest, and secured the death certificate of the victim from the PNP Crime Laboratory (Exhibit "J"). [29] To close his testimony on direct examination, Pio identified Laurente and further disclosed their efforts to locate the other suspects. [30]

On cross-examination, Pio clarified certain details regarding the findings of the investigation, e.g., the locus criminis was well lit as a lamp post was nearby. [31] However, Pio admitted that although he informed Laurente of his constitutional rights while he was investigated at the police station, Laurente was not represented by counsel during such investigation; he was merely accompanied by a sister and some cousins. Nevertheless, despite the absence of counsel, Laurente verbally admitted his complicity in the crime, although the admission was not

reduced in writing.[32]

Myra Guinto testified that on 14 February 1994, at about 9:15 p.m., she was selling cigarettes at Sitio Square, Shaw Boulevard, Pasig, around a meter away from the Provincial Capitol.[33] At such time, she saw people scrambling inside a yellow taxicab which was "at the stop position" on the other side of the Street. Three men then left the taxicab, ran towards her, and at the time these men passed in front of her, they were "about 2 arms length[s]" away. These men then boarded a jeepney headed towards Pasig. A fourth man approached the taxicab, saw the taxicab driver inside already dead and called the police.[34]

She was questioned by the policemen upon their arrival, and at a later date, reduced her statements into writing (Exhibit "F"). After she identified Exhibit "F," Guinto then identified Larry Laurente as one of the three men who left the taxicab and passed in front of her.[35]

On cross-examination, Guinto declared that the "taxi was rather of old vintage" and that it did not have tinted windows, in fact, one "could see the persons inside the taxi." She likewise declared that the place where she first saw the taxicab had "a big white bulb" and was approximately fifteen meters away from where she was selling cigarettes.[36]

Felicitas Matematico testified that the victim was her father and presented the following as evidence of funeral expenses: (a) several pieces of paper with the tagalog caption "nagastos noong lamay"[37] (Exhibit "K");[38] (b) a receipt dated 22 February 1994 for P800.00, for the construction of a niche cover (Exhibit "L");[39] and (c) a receipt dated 21 February 1994 from Sta. Marta Funeral Homes for P 10,000.00 (Exhibit "N");[40] for a total of P27,300.00. To close her testimony on direct examination, she stated that she was "still sad" about the death of her father; and when asked to "quantify her sadness," she responded that her mother was in a better position to do so.[41]

Dr. Emmanuel Arañas testified on the autopsy he conducted on the cadaver of the victim and the medico-legal report (Exhibit "O") he made on 15 February 1994.[42] He reiterated his finding that the cause of death of the victim was "traumatic injuries of head," and that he suffered the following injuries: "(1) Hematoma, right peri-orbital region, measuring 5 by 3 cm., 4 cm. on the anterior midline; and (2) Contusion, neck, measuring 15 by 1.8 cm., crossing the anterior midline, 2 cm. to the right and 13 cm. to the left," and that "[t]here are subdural and subarachnoidal hemorrhages." He opined that the injuries could have been caused by a "hard blunt instrument," such as a belt, a piece of wood, or a head (buckle) of a belt.[43]

On his part, accused Larry Laurente interposed the defense of alibi. On the witness stand, he related that on 14 February 1994, at around 3:00 to 3:30 p.m., he was in his house at Consorcia Street, San Joaquin, Pasig, together with his friends Melvin Dagudog and Richard Disipulo. Supposedly, they began a drinking session at around 3:30 p.m. which lasted four hours, during which period they consumed two bottles of "Tanduay 5 years." After that, he did not leave his house anymore,[44] as he got so drunk, "lost consciousness," and did not wake up until 4:00 a.m. the next day. It was only then that he found out his two friends had left his house.[45]

In the morning of 15 February 1994, he had to look for his wallet as it got lost "in [his] wooden bed (papag) where [he slept]." That wallet contained an "I.D., SSS number and P250.00." He then presumed that Melvin Dagudog and Richard Disipulo had taken his wallet as they were the only ones in the house during the drinking session. Having failed to obtain any information from his neighbors, Mang Roming and Ate Baby, as to where Dagudog and Disipulo had gone, he went home to rest; then he took a shower and got ready to report for work. He had been a shingle molder at Winning Enterprises for the past three years, with offices in Taguig, Rizal.[46] He maintained that on 15 February 1994, he reported for work at 6:00 a.m. and stayed in the office till 8:00 p.m.[47]

After returning home from work, four policemen were waiting for him, and in Laurente's own words, "bigla na lang po akong sinugod at hinila." [48] He surmised that they were policemen even if they were not in uniform because they were "holding guns." Although they had no warrant of arrest, the policemen brought him to the Pasig police station where he was investigated for being "a hold-upper"; and throughout the investigation, he was not assisted by counsel. [49] On cross-examination of Laurente, the prosecution obtained an admission that it would take him "about half an hour" to travel from his house to the Provincial Capitol. [50]

On 23 August 1994, the trial court promulgated the challenged decision wherein, as stated earlier, it found Laurente guilty beyond reasonable doubt of highway robbery with homicide "punishable by death as a single indivisible penalty under Presidential Decree No. 532 entitled 'Anti-Piracy and Anti-Highway Robbery Law of 1974.'" [51] It gave full faith and credit to the eyewitness account of Myra Guinto and rejected the defense of alibi proffered by the Laurente as "he failed miserably to give any evidence to support this claim." [52] Regarding Laurente's presence at the locus criminis, it relied on the positive identification made by Myra and Laurente's SSS ID card which was found inside the taxicab of the victim. Apparently, finding it difficult to impose a death penalty, the trial court stated:

[W]hile the undersigned Presiding Judge does not believe in the imposition of the death penalty as a form of punishment, as he has stated about a month ago in Criminal Case No. 104781, entitled "People of the Philippines vs. Elpidio Mercado, et al., this same Court, nevertheless, in obedience to the law which is his duty to uphold, the Court hereby sentences accused LARRY LAURENTE y Bejasa to death x x x. [53]

Laurente forthwith filed a Notice of Appeal. The trial court noted therein that the review by this Court was automatic. [54]

In his Brief, Laurente assigns the following errors committed by the trial court, but being interrelated, discusses them jointly:

I.

THE TRIAL COURT ERRED IN CONCLUDING THAT ACCUSED-APPELLANT LARRY LAURENTE WAS POSITIVELY IDENTIFIED BY THE PROSECUTION WITNESS.

II.

THE TRIAL COURT ERRED IN CONVICTING ACCUSED-APPELLANT OF HIGHWAY ROBBERY WITH HOMICIDE DESPITE THE FACT THAT THE ELEMENTS OF COMMITTING SUCH CRIME WERE NOT SUBSTANTIALLY PROVEN BY THE PROSECUTION. [55]

Laurente anchors his prayer for acquittal on the unreliability of the positive identification made of him by the lone eyewitness who testified at the trial, Myra Guinto. He initially attempts to discredit this by deducing from Myra's testimony in court that she was neither able to recognize the three men she allegedly saw coming out of the taxicab, nor see Laurente stab the victim. Thus:

ATTY.FERNANDEZ:

xxx

Q:

By the way, do you know these men who came out from the taxi and passed by you?

A:

No, sir.

xxx(TSN, May 6, 1994)

Q:

And also did not have any knowledge that there was a stabbing incident that happened inside the taxi?

A:

None, sir.

Q:

Now, you said that there were three men who ran passed [sic] in front of you. Is that correct?

A:

Yes, sir.

Q:

And because of that speed, you were not able to identify any of these persons?

A:

No, sir. I was able to recognize one of them because they ran in front of me, sir.

xxx

Q:

Will you describe to the Honorable Court how fast these man passed by in front of you?

A:

It was quite fast, sir.

xxx

Q:

You identified the accused in this case as the one who allegedly killed the victim in this case. Is that correct?

A:

Yes, sir.

Q:

Now, did you personally see the accused stabbed [sic] the victim or killed [sic] the victim?

A:

No, sir. (Ibid, p. 7-8) (*Italics Ours*)[56]

Hence, Laurente concludes that "[t]he identification [by Myra Guinto] of the accused-appellant in the police line-up as one of those who killed the victim. . . is . . . not entirely reliable." [57]

Laurente then continues his assault on Myra's positive identification by surmising:

[T]hat it was only thru the SSS ID Card of the accused-appellant which was found inside the taxicab that made the police authorities conclude or suspect [the] accused-appellant. . . Thus, in all probability, the identification. . . in the police line-up was because of the SSS ID Card but not for the reason that she recognized the accused-appellant on the night of the incident.[58]

As to his SSS ID card in the wallet found inside the taxicab, Laurente submits that the said card:

[W]ill not suffice as a ground for conviction, for neither was it established that accused-appellant had left the I.D. while committing the felony. It may well be that who ever took appellant's wallet with the I.D. in it purposely left the same to implicate [the appellant] . . . It was established by the defense that the wallet of the accused-appellant which contained his SSS ID Card was stolen from him by his co-accused [and] this allegation remain[s] un rebutted by the prosecution.[59]

Finally, Laurente challenges the trial court's rejection of the defense of alibi and relates this to the allegedly improbable positive identification by Myra Guinto and ultimately, the constitutional presumption of innocence:

While it may be admitted that the defense of alibi. . . is. . . weak this gains strength when the evidence of the prosecution is equally weak. As earlier discussed, there is no positive identification of the [appellant] by. . . Myra Guinto, thus the defense of alibi of the appellant perforce prevails. As held, the weakness of alibi of the accused could not strengthen the prosecution's case for settled is [the] rule that the prosecution must rely on the strength of its evidence and not on the weakness of the defense. (People v. Garcia, 215 SCRA 349) Further, alibi as a defense assumes commensurate strength . . . where the evidence presented by the prosecution [is] unreliable and uncertain since it is not relieved of the onus probandi just because alibi is the defense invoked by the accused (People v. Jalon, 215 SCRA 680).[60]

At bottom, Laurente's line of reasoning flows as such: First, the positive identification by Myra Guinto is unreliable as she did not see the three men who came out of the taxicab, neither did she see Laurente stab the victim. Second, in the light of the improbability of Myra having adequately seen Laurente at the locus criminis, the positive identification at the police line-up necessarily cannot be relied upon as well. Third, without the positive identification of Laurente, only his SSS ID card found inside the taxicab links him to the crime; however, Laurente satisfactorily proved that his wallet containing his SSS ID card had been taken. Hence, he concludes, the spurious positive identification, either at the scene of the crime or at the police line-up, coupled with the weak link provided by his SSS ID card found inside the taxicab, should not be allowed to overcome the defense of alibi and the presumption of innocence.

Laurente's attempts to cast doubt upon the positive identification made of him by Myra must fail.

Laurente's contention that Myra did not see the three men who came out of the taxicab deserves scant consideration. As the proceedings below clearly established, the place where Myra saw Laurente was well-lit due to a lamp post nearby and the latter was only two arms lengths away from her when he passed in front of her. Moreover, she identified Laurente at the police line-up, which was even photographed, and in open court. Finally, as observed by the trial court:

Nothing in the demeanor of prosecution witness Myra Guinto would indicate that she harbors ill-feelings towards accused Larry Laurente that she will falsely testify against him. Her testimony is thus given much weight by the Court. . .[61]

This assessment of the credibility of eyewitness Myra Guinto deserves the highest respect of this Court, considering that the trial court had the direct opportunity to observe her deportment and manner of testifying and availed of the various aids to determine whether she was telling the truth or concocting lies.[62] This is a settled rule in this jurisdiction and the exceptions thereto, viz., some fact or circumstance of weight and influence has been overlooked or the significance of which has been misinterpreted, which if considered might affect the result of the case,[63] have not been shown to exist in this case.

Equally settled is the rule that where there is no evidence, and nothing to indicate that the principal witnesses for the prosecution - like Myra in this case - were actuated by improper motive, the presumption is that they were not

so actuated and their testimony is entitled to full faith and credit.[64]

Laurente's next contention that Myra did not actually see him stab the victim must likewise fail. From the circumstances obtaining in this case, it cannot be doubted that Laurente and his companions acted in conspiracy in committing the crime. They were together in the taxicab when it stopped and Myra saw them "scrambling inside," after which, they ran off and boarded a jeepney to escape. On the matter of proving the existence of conspiracy, it is settled that direct proof of the previous agreement to commit a crime is not necessary. It may be deduced from the mode and manner by which the offense was perpetrated, or inferred from the acts of the accused themselves when such point to a joint purpose and design, concerted action and community of interest.[65] There is no doubt in our minds that the victim was killed by the co-conspirators. That Myra did not actually see that it was Laurente who stabbed the victim is of no moment. Once conspiracy is established, the act of one is the act of all.[66]

Laurente's story on the alleged loss of his SSS ID card and its being found in the taxicab is simply unbelievable. As to his defense, the trial court assessed Laurente's testimony in this manner:

Accused Larry Laurente would like the Court to believe that he was someplace else when the hold-up and killing . . . occurred . . . During his testimony, he first claimed to have gone to work on February 14, 1994, and then on the same breath, he suddenly changed his mind and said that he was absent. He would also like to convince the Court that his co-accused in this case, Richard Disipulo and Melvin Dagudog, came out of the blue, had a drinking session with him, and just left with nary a word to him.

"Evidence to be believed must proceed not only from the mouth of a credible witness but the same must be credible in itself as when it conforms to the common experience and observation of mankind." (People vs. Jalon, 215 SCRA 680).

The Court also noted that [the] accused. . . contradicted himself when he said that he ha[d] been a molder . . in Tagig, Metro Manila for the past three (3) years and yet, he has only been in Manila from Negros Oriental last October! Such inconsistencies destroy his credibility and further bolster the Court's findings that his defense of alibi is merely invoked as a matter of convenience.[67]

We are in full accord with such assessment, and further reiterate the rule that alibi, being the weakest of all defenses as it is easy to fabricate and difficult to disprove, cannot prevail over and is worthless in the face of the positive identification of the accused.[68] But most telling in this case is that Laurente's alibi does not meet the requirements of time and place. It is not enough to prove that the accused was somewhere else when the crime was committed, but he must also demonstrate by clear and convincing evidence that it was physically impossible for him to have been at the scene of the crime at the time the same was committed.[69] On cross-examination, Laurente admitted that it would take "about half an hour" to traverse the distance from his house to the scene of the crime.[70] Such distance is so near as not to preclude his having been at the scene of the crime when it was committed. We are, therefore, left with no option but to rule that the prosecution has discharged its burden to prove the commission of homicide by Laurente and to reject his defense of alibi.

Proof of the commission of robbery, however, must be examined more closely.

Laurente pleads that the prosecution failed to prove the element of robbery, thus, his conviction of the crime charged should not be sustained. On this score, Laurente calls this Court's attention to the fact:

[T]hat not a single [shred of] evidence was introduced by the prosecution to prove robbery or unlawful taking of property from the victim. Nothing was shown whether the victim was divested of his money or other personal belongings. It cannot be presumed that the main purpose of the killing . . . was to rob [the victim]. There must be evidence showing the unlawful taking of another by means of violence or force upon things to make the accused-appellant liable under Pres. Dec. No. 532. . .[71]

An examination of the records of this case reveals that the following constitute the evidence to prove the robbery aspect of the offense: the statement given by the victim's daughter to the investigating! arresting officer,[72] and the contents of the affidavit executed by the investigating/arresting officer himself.[73]

The police statement of the victim's daughter contained the following exchange:

"05. t:

Nalaman mo ha naman kung ano ang dahilan at pinatay ang iyong tatay?

s:

Ang tatay ko po ay hinoldap.

06. t:

Ano naman ang trabaho nang iyong tatay, para siya holdapin?

s:

Siya po ay taxi driver.

xxx

08. t:

Nalaman mo ha naman kung magkano ang nakuha O' naholdap sa iyong tatay?

s:

Hindi ko po alam kung magkano pero wala na po ang kinita niya sa pagpapasada ng taxi.

09. t:

Papaano naman ninyo nalaman na hinoldap at napatay ang iyong tatay?

s.

Nuong pang gabi ng petsa 14 ng Pebrero 1994, mayroon pong pumunta sa aming bahay at kami po ay inimformahan na ang aking tatay ay hinoldap at napatay habang sakay siya ng kanyang inilalabas na taxi.[74] (*italics supplied*)

Clearly, such constituted inadmissible hearsay as any knowledge as to the robbery aspect of the offense was not derived from her own perception[75] and did not fall within any of the exceptions to the hearsay rule.[76] However, assuming arguendo that the said statements were admissible for failure of the defense counsel to raise a timely objection, nevertheless, such statements carry no probative value.[77]

On the subject of SPO1 Pio's affidavit concerning the conduct of the investigation, it becomes the sole piece of evidence to prove the robbery in the case before us. The relevant portion is quoted hereunder:

That . . . a crime scene search was conducted by this investigator, during said search, . . . a leather wallet colored brown was found on the passenger seat at the back . . . further the personal belongings of the dead man known as the taxi driver was [sic] intact, however, his daily earnings was [sic] missing, showing that the victim

was robbed before being killed. . .[78] (*italics supplied*)

This Court holds that the above statements, as the lone measure by which to judge the commission of robbery, are insufficient to prove the same, i.e., that the victim actually earned money and that these earnings were unlawfully taken by the accused. The prosecution, in this regard, failed to discharge the burden of proof and satisfy the quantum of evidence for the robbery aspect in this case.

A conviction for robbery simply cannot be had in the light of the total absence of evidence regarding the taxicab driver's earnings and the sweeping statement that "the personal belongings of the dead man . . . [were] intact." Moreover, the prosecution did not even bother to introduce evidence as to what time the victim in this case started plying his route, which may have led to a reasonable inference that he had earned some money by the time the crime was committed. In sum, there is no conclusive evidence proving the physical act of asportation by Laurente and his co-accused.[79]

It is settled that in order to sustain a conviction for the crime of robbery with homicide, it is imperative that the robbery itself be proven as conclusively as any other essential element of a crime. In the absence of such proof, the killing of the victim would only be simple homicide or murder, depending on the absence or presence of qualifying circumstances.[80]

We thus rule that the crime committed by Laurente is homicide under Article 249 of the Revised Penal Code and penalized therein with reclusion temporal. Since no modifying circumstances have been established, it shall be imposed in its medium period pursuant to Article 64(1) of the Revised Penal Code.

In passing, this Court notes with much concern that the law enforcers in this case failed to respect Laurente's rights against unlawful arrest[81] and during custodial investigation.[82]

In this case, the follow-up team which arrested Laurente on 15 February 1994 had only the latter's SSS ID card as possible basis to link Laurente to the crime. None of the members of the team were eyewitnesses to the commission of the crime; they had, therefore, nothing to support a lawful warrantless arrest under Section 5, Rule 113 of the Rules of Court. Under this section, a peace officer or a private person may, without warrant, arrest a person only: (a) when in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense; (b) when an offense has in fact been committed, and he has personal knowledge of facts indicating that the person to be arrested has committed it; and (c) when the person to be arrested is a prisoner who has escaped from a penal establishment or place where he is serving final judgment or temporarily confined while his case is pending, or has escaped while being transferred from confinement to another.

SPO1 Crispin Pio candidly admitted that he investigated Laurente without the benefit of counsel after Laurente was arrested, although he informed him of his constitutional rights. As to what these rights were, he never disclosed; moreover, neither did Pio demonstrate that he exerted the requisite effort to ensure that Laurente understood his rights.[83] Undoubtedly, the custodial investigation had commenced, as the police authorities had in fact pinpointed Laurente as the author or one of the authors of the crime or had focused on him as a suspect thereof. Finally, there is no evidence that Laurente waived the rights to remain silent and to counsel. Section 12(1), Article III of the 1987 Constitution provides as follows:

SEC. 12 (1). Any person under investigation for the commission of an offense shall have the right to be informed of his right to remain silent and to have competent and independent counsel preferably of his own choice. If the person cannot afford the services of counsel, he must be provided with one. These rights cannot be waived except in writing and in the presence of counsel.

There was then a total disregard of the duties of an investigator during custodial investigation, which this Court

laid down in *Morales vs. Enrile*,^[84] reiterated in several cases.^[85]

It cannot be overemphasized that the rights enshrined in the Bill of Rights^[86] are the very mechanisms by which the delicate balance between governmental power and individual liberties is maintained. Thus, it does not bode well for society when our law enforcers defy the fundamental law of the land in ignoring these rights designed to ensure the very equilibrium of our democracy.

It must, however, be pointed out that the conviction of Laurente is not based on his alleged oral admission during his custodial investigation by SPO1 Crispin Pio.

WHEREFORE, the challenged decision of Branch 156 of the Regional Trial Court of Pasig in Criminal Case No. 104785 is hereby modified as to the nature of the offense committed. As modified, accused-appellant LARRY LAURENTE y BEJASA is found guilty beyond reasonable doubt, as co-principal by direct participation, of the crime of Homicide, defined and penalized under Article 249 of the Revised Penal Code, and applying the Indeterminate Sentence Law, said accused-appellant LARRY LAURENTE y BEJASA is hereby sentenced to suffer an indeterminate penalty ranging from Ten (10) years of prision mayor medium, as minimum, to Seventeen (17) years and Four (4) months of reclusion temporal medium, as maximum. In all other respects, the appealed decision is AFFIRMED.

Costs against the accused-appellant.

SO ORDERED.

Narvasa, C.J., Padilla, Regalado, Romero, Bellosillo, Melo, Puno, Vitug, Kapunan, Mendoza, Francisco, Hermosisima, Jr., and Panganiban, JJ., concur.

Torres, J., on leave.

[1] Article 47, Revised Penal Code, as amended by Section 22, R.A. No. 7659.

[2] Original Records (OR), 1 16-128; Rollo, 12-24. Per Judge Martin S. Villarama, Jr.

[3] Entitled, "The Anti-Piracy and Anti-Highway Robbery Law of 1974" which took effect on 8 August 1974 (*People vs. Rodriguez*, 135 SCRA 485,491 [1985]).

[4] *Infra* note 15.

[5] See Preamble of P.D. No. 532.

[6] 219 SCRA 85, 96-100 [1993].

[7] *People vs. Muñoz*, 170 SCRA 107 [1989].

[8] The said section provides that "[e]xcessive fines shall not be imposed, nor cruel, degrading or inhuman punishment inflicted. Neither shall the death penalty be imposed, unless, for compelling reasons involving heinous crimes, the Congress hereafter provides for it. Any death penalty already imposed shall be reduced to reclusion perpetua."

[9] Entitled, "An Act to Impose the Death Penalty on Certain Heinous Crimes, Amending for that purpose the Revised Penal Code, as Amended, other Special Penal Laws, and for Other Purposes"; 90 O.G. No. 3, 311-326, 17 January 1994. The law took effect on 31 December 1993 (*People vs. Simon*, 234 SCRA 555,569 [1994]).

[10] It either re-imposed or imposed the death penalty in the following cases, viz., treason, qualified piracy, qualified bribery, parricide, murder, infanticide, kidnapping and serious illegal detention, some instances of

robbery with violence against or intimidation of persons, destructive arson, some classes of rape, plunder involving an aggregate amount of at least P50 million, some forms of violations of the Dangerous Drugs Act of 1972, as amended, and carnapping.

[11] *Infra*, note 15.

[12] Section 14(2), Article III, 1987 Constitution.

[13] FLORENZ D. REGALADO, *Remedial Law Compendium*, Vol. 2, Third Revised Ed. [1984], 599 (citations omitted); JOAQUIN G. BERNAS, S.J., *The Constitution of the Republic of the Philippines - A Commentary*, Vol. 1 [1987] 387; ISAGANI A. CRUZ, *Constitutional Law* [1991] 314.

[14] OR, 1 ; Rollo, 3-4.

[15] OR, 48.

[16] TSN, 12 July 1994,7.

[17] OR, 24-27.

[18] OR, 83,90.

[19] TSN, 26 April 1994,3-4.

[20] *Id.*, 4-5.

[21] TSN, 26 April 1994, 5.

[22] *Id.*, 5 (should be 6 due to a mistake in pagination which resulted in two pages being marked as 5).

[23] Chief Senior Inspector Felix Balitao.

[24] OR, 41.

[25] *Id.* 3-5.

[26] *Id.*, 2.

[27] *Id.* 8.

[28] *Id.*, 7.

[29] OR, 10.

[30] TSN, 26 April 1994,6-9 (should be 7-10).

[31] *Id.*, 11 (should be 12).

[32] *Id.*, 12-13 (should be 13-14).

[33] TSN, 6 May 1994,2-3.

[34] *Id.*, 3-4.

[35] TSN, 6 May 1994, 4-5.

[36] *Id.*, 6.

[37] This translates to "amount spent for the wake."

[38] OR, 59.

[39] Id., 56.

[40] Id., 58.

[41] TSN, 6 May 1994, 10-11.

[42] OR 72.

[43] TSN, 17 May 1994, 5-7.

[44] TSN, 12 July 1994, 3-4.

[45] Id., 5.

[46] TSN, 12 July 1994, 3.

[47] Id., 5-7.

[48] This literally translates to: "They suddenly rushed towards me and pulled me."

[49] TSN, 12 July 1994, 7-8.

[50] Id., 13-14.

[51] OR, 126; Rollo, 22.

[52] Id., 125; Id., 21.

[53] Id., 127-128; Id., 23-24, 61-62.

[54] OR, 132.

[55] Rollo, 44-45.

[56] Rollo, 45-46.

[57] Id., 46.

[58] Id., 46.

[59] Id., 47.

[60] Rollo, 48.

[61] OR, 126; Rollo, 22.

[62] People vs. Enciso, 223 SCRA 675 [1993]; People vs. Lagrosa, Jr., 230 SCRA 298 [1994].

[63] People vs. Marcelo, 223 SCRA 24 [1993].

[64] People vs. Simon, 209 SCRA 148 [1992]; People vs. Castor, 216 SCRA 410 [1992]; People vs. Taneo, 218 SCRA 494 [1993]; People vs. Rostata, 218 SCRA 657 [1993]; People vs. Quejada, 223 SCRA 77 [1993].

[65] People vs. Pama, 216 SCRA 385 [1992]; People vs. Cordova, 224 SCRA 319 [1993]; People vs. Canillo, 236 SCRA 22 [1994].

[66] *People vs. Pama*, supra note 65; *People vs. Rostata*, supra note 64; *People vs. Liquiran*, 228 SCRA 62 [1993]; *People vs. Canillo*, supra note 65.

[67] OR, 124-125; Rollo, 20-21.

[68] *People vs. Lee*, 204 SCRA 900 [1991]; *People vs. Casinillo*, 213 SCRA 777 [1992]; *People vs. Florida*, 214 SCRA 227 [1992].

[69] *People vs. Penillos*, 205 SCRA 546 [1992]; *People vs. Buka*, 205 SCRA 567 [1992]; *People vs. de la Cruz*, 207 SCRA 632 [1992]; *People vs. Castor*, supra note 64.

[70] TSN, 12 July 1994, 13-14.

[71] Rollo, 47-48.

[72] Exhibit "E"; OR, 2.

[73] Exhibit "H"; Id., 7.

[74] OR, 2.

[75] Section 36, Rule 130, Rules of Court.

[76] Sections 37-47, Id.

[77] *People vs. Nebreja*, 203 SCRA 45, 58 [1991], citing *People vs. Valero*, 112 SCRA 661,675 [1982].

[78] OR, 7.

[79] *People vs. Martinado*, 214 SCRA 712, 724 [1992].

[80] *People vs. Martinado*, supra note 79.

[81] Section 2, Article III, 1987 Constitution; Section 7, Rule 113, Rules of Court.

[82] Section 12(1), Article III, 1987 Constitution.

[83] *People vs. Basay*, 219 SCRA 404, 418-419 [1993].

[84] 121 SCRA 538 [1983].

[85] See *People vs. Galit*, 135 SCRA 465 [1985]; *People vs. Lumayok*, 139 SCRA 1 [1985]; *People vs. Albofera*, 152 SCRA 123 [1987]; *People vs. Marquez*, 153 SCRA 700 [1987]; *People vs. Penillos*, supra note 69; *People vs. Bandula*, 232 SCRA 566 [1994]; *People vs. Agustin*, 240 SCRA 541 [1995]; *People vs. Maqueda*, 242 SCRA 565 [1995].

[86] Article III, 1987 Constitution.

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