

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. CESAR GAVINA Y NAVARRO, ACCUSED-APPELLANT.

G.R. No. 118076. November 20, 1996

Ponente: REGALADO, J.

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REGALADO, J.:

Accused-appellant Cesar Gavina y Navarro argues in this appeal that, for lack of the requisite element of *animus lucrandi*, the Regional Trial Court, Branch 41, of Dagupan City should have found him guilty in Criminal Case No. D-11417 of only the lesser offense of homicide and not the special complex crime of robbery with homicide. The evidence for the prosecution, however, indubitably established the contrary. The trial court stamped its imprimatur thereon and rendered a condemnatory verdict. We affirm.

On February 20, 1993, accused-appellant was charged with the felony of robbery with homicide, the accusatory part of the corresponding information reading --

"That on or about the 19th day of February, 1993, in the City of Dagupan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, CESAR GAVINA y Navarro, being then armed with a knife, with intent to gain and by means of violence against person, did then and there, wilfully, unlawfully and criminally, rob one CIPRIANO TANDINGAN of his cash in the amount of P70,800.00, by stabbing him on vital part parts (sic) of his body with the said weapon, thereby causing the death of the latter due to 'Cardio respiratory arrest, Massive Intrathoracic and Mediastinal Hemorrhage, Multiple stab wound' as per Autopsy Report issued by Dr. Tomas G. Cornel, Asst. City Health Officer, this city, to the damage and prejudice of the legal heirs of said deceased, CIPRIANO TANDINGAN, in the amount of not less than FIFTY THOUSAND PESOS (P50,000.00) Philippine currency, and other consequential damages."[1]

At his arraignment on June 22, 1993, appellant with the assistance of counsel *de officio*, registered his negative plea to the indictment.[2] Trial thereafter ensued and eventually, on September 27, 1994, the lower court rendered its adverse decision[3] finding the accused guilty as charged. The penalty of life imprisonment was imposed upon appellant who was at the same time ordered to indemnify the heirs of Cipriano Tandingan in the amount of P100,000.00, to restitute to Ruben Go, the victim's employer, the amount of P89,200.00, and to pay the costs of the suit.[4]

Prosecution eyewitness SPO1 Esteban Martinez narrated on the witness stand that on February 19, 1993, he was on duty and was posted along the junction of A. B. Fernandez Avenue and Nable Street in Dagupan City. At a little past noon of that day, he noticed from across the street where he was standing that two men were grappling for possession of a black bag. Sensing trouble, he forthwith ran to where the two men were thus preoccupied and, as he was on his way, one of the men, whom he later identified as the appellant, pulled out a knife and stabbed the other three times.[5]

As Martinez neared the duo, appellant who was by then in possession of the black bag, scampered away upon seeing the onrushing police officer and, in his haste, he dropped both the black bag and the knife. Appellant then boarded a passing jeepney and it was in said jeepney that SPO1 Martinez, still in hot pursuit, was able to pounce

on and arrest him. Recovered at the crime scene were the black bag, which turned out to contain more than P70,000.00 in cash, and the knife which appellant had used in stabbing his victim, Cipriano Tandingan.[6]

Another prosecution eyewitness, Angel Sarmiento, testified and corroborated the account of SPO1 Martinez that appellant tried to escape by boarding the public utility jeepney which he was then driving along A. B. Fernandez Avenue on the day and time in question.[7] The employer of the victim, one Ruben Go, likewise appeared in court and recalled that on that particular day he instructed the victim, who was then employed as a cashier in Go's grocery store, to encash a check in the amount of P160,000.00 at the Dagupan City branch of Solidbank.[8]

Cipriano Tandingan apparently was able to encash the same just before he was waylaid by appellant. Tandingan's sister, Eleanor Tandingan Penullar, confirmed that her brother was indeed an employee of Ruben Go at the time of his demise. She also testified as to her brother's income at that time, as well as the expenses they incurred for his funeral wake and burial which amounted to approximately P52,500.00.[9] Dr. Conrad Cornel, a medico-legal and assistant city health officer in Dagupan City, informed the trial court that the victim suffered multiple stab wounds on the chest, all of which proved to be fatal.[10]

While appellant admitted having killed the victim, he advanced an altogether different version of the incident. He claimed that on February 19, 1993, he left for and arrived at around noontime in Dagupan City. He was then in front of Covelandia, a commercial establishment located along A. B. Fernandez Avenue, when he chanced upon the victim and it was with the latter that he decided to have his P500.00 bill changed into smaller denominations. The victim agreed to do so and appellant, after receiving the bills, then hurriedly left as someone was waiting for him. At this point, he noticed that he had been shortchanged in the amount P10.00 and, for that reason, he had to go back.[11]

Appellant met Tandingan along the way and he confronted the latter. To appellant's surprise, the victim retorted with fist blows which thus prompted him to kick Tandingan in retaliation. The victim then reached for a knife, but appellant beat him to the draw by pulling out his own knife which he used in stabbing the victim to death. He then immediately boarded a jeepney and it was there that he was accosted by SPO1 Martinez. Appellant vehemently denied having taken the clutch bag of the victim which contained cash and contended that he never intended to rob Tandingan whom he had met for the first time that day.[12]

There appears to be no reversible error in the factual findings of the trial court that appellant indeed committed the special complex crime of robbery with homicide. The witnesses for the prosecution had credible stories to narrate to the court a quo, particularly SPO1 Martinez whose testimony is entitled to much weight considering the fact that he is a police officer. In contrast, appellant's defense consisting of bare denials, especially when viewed alongside the positive and forthright testimony of SPO1 Martinez, suffers from inherent vulnerability and generates total disbelief.

In the offense of robbery with homicide, a crime primarily classified as one against property and not against persons, the prosecution has to firmly establish the following elements: (a) the taking of personal property with the use of violence or intimidation against a person; (b) the property thus taken belongs to another; (c) the taking is characterized by intent to gain or animus lucrandi; and (d) on the occasion of the robbery or by reason thereof, the crime of homicide, which is therein used in a generic sense, was committed.[13]

In the case under review, there is no dispute that appellant employed undue violence and, on the occasion thereof, killed Cipriano Tandingan while wresting the clutch bag from the possession of the victim. SPO1 Martinez clearly established that appellant and the victim were struggling with each other for possession of the bag. In the course of the altercation, appellant pulled out a knife which he then used in repeatedly stabbing his quarry. It was decidedly through such homicidal violence that appellant was able to get hold of the clutch bag, but had to shortly

thereafter let go thereof together with the knife when SPO1 Martinez closed in on him.

From the foregoing testimony of said police officer, no other conclusion can be deduced than that appellant was initially seen by him in the act of unlawfully taking away the bag of Tandingan and that he in fact succeeded in forcibly taking possession of the same. In short, the element of taking or asportation was completed when appellant violently got hold of the bag however momentarily. In robbery, the element of asportation -- which requires the unlawful taking of personal property from the possession of its owner, without his privity and consent and without animus revertendi -- is present once the property is in fact taken from the owner, even for just an instant. The subsequent disposition of the property taken, or the failure to dispose of the same, is of no moment in so far as the characterization of the offense as robbery is concerned.[14]

With regard to appellant's contention that animus lucrandi was not established by the prosecution, the same is completely devoid of merit. Animus lucrandi or intent to gain, as the Solicitor General correctly submits, is an internal act which can be established through the overt acts of the offender. As this Court pithily put it in the early case of *People vs. Sia Teb Ban*,[15] "one's intention may be gathered from one's deeds." Appellant's act of obtaining possession of the victim's clutch bag through violence speaks for itself. And, the fact that the clutch bag of the victim was later found to contain a considerable amount of money only confirms that appellant had intended to rob Tandingan all along.

As to the ownership of the money recovered from the crime scene, there is ample proof showing that the same belonged to the victim's employer, Ruben Go. There seems to be an apparent variance, therefore, between the allegation in the indictment and the proof regarding the same. Based on the testimony of Ruben Go, however, the victim had been lawfully authorized to have in his possession the money which he obtained by encashing a check with Solidbank upon the express instructions of Ruben Go.

At all events, in robbery by the taking of property through intimidation or violence, it is not necessary that the person unlawfully divested of the personal property be the owner thereof. Article 293 of the Revised Penal Code employs the phrase "belonging to another" and this has been interpreted to merely require that the property taken does not belong to the offender. Actual possession of the property by the person dispossessed thereof suffices. In fact, it has even been held that robbery may be committed against a bailee or a person who himself has stolen it.[16] So long as there is apoderamiento of personal property from another against the latter's will through violence or intimidation, with animus de lucro, robbery is the offense imputable to the offender. And, if the victim is killed on the occasion or by reason of the robbery, the offense is converted into the composite crime of robbery with homicide.

There are, however, obvious errors in the disposition made by the court below concerning the penalty imposed and the order for restitution of the amount of P89,200.00 to Ruben Go, which thus calls for modification of its judgment. Article 294 of the Revised Penal Code specifically imposes the penalty of reclusion perpetua to death in robbery with homicide. Reclusion perpetua and life imprisonment are not synonymous but are distinct in nature, in duration, and in accessory penalties.[17] As regards the order of restitution, there is clearly no ground to order the same since it was lucidly demonstrated at the trial that the cash money, which was immediately recovered at the scene of the crime, actually amounted to only P70,800.00 and not P160,000.00.

ACCORDINGLY, the judgment of the court a quo is MODIFIED. Accused-appellant Cesar Gavina y Navarro is hereby sentenced to suffer the penalty of reclusion perpetua, and the order for the restitution to Ruben Go of the further amount of P89,200.00 is deleted for lack of basis. In all other respects, the judgment appealed from is hereby AFFIRMED.

SO ORDERED.

Romero, Puno, Mendoza, and Torres, Jr., JJ., concur.

[1] Original Record, 1.

[2] Ibid., 24.

[3] Per Judge Deodoro J. Sison.

[4] Original Record, 208.

[5] TSN, February 1, 1994, 2; March 22, 1994, 2-4.

[6] Ibid., id., 3-5; id., 4-7.

[7] Ibid., July 22, 1993, 2-4.

[8] Ibid., January 18, 1994, 2-4; January 11, 1994, 2-5.

[9] Ibid., October 12, 1993, 2-6.

[10] Ibid., September 2, 1993, 2-5.

[11] Ibid., August 8, 1994, 3.

[12] Ibid., id., 4-9.

[13] People vs. Esperraguerra, et al., G.R. No. 113785, September 14, 1995, 248 SCRA 207.

[14] People vs. Apolinario, et al., G.R. No. 97426, June 3, 1993, 223 SCRA 94.

[15] 54 Phil. 52 (1929).

[16] U.S. vs. Albao, 29 Phil. 86 (1914).

[17] People vs. Samson, et al., G.R. No. 100911, May 16, 1995, 244 SCRA 146; People vs. Magalong, et al., G.R. No. 100125, May 12, 1995, 244 SCRA 117.

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