

## THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ARIEL PEDROSO Y CIABO, ACCUSED-APPELLANT.

*G.R. No. 125128. July 19, 2000*

Ponente: MELO, J.

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### MELO, J.:

Under Article 63 of the Revised Penal Code, if an accused is found guilty of a felony for which the law prescribes a penalty composed of two indivisible penalties, the trial court judge has to impose one or the other, not both. This rule, elementary as it is, needs reiteration in the case at bar.

On June 17, 1994, Ariel Pedroso y Ciabo was charged before Branch 26 of the Regional Trial Court of the National Capital Region stationed in Manila with the crime of robbery with homicide, committed as follows:

That on or about June 2, 1994, in the City of Manila, Philippines, the said accused, conspiring and confederating with others whose true names, identities and present whereabouts are still unknown and helping one another, did then and there willfully, unlawfully and feloniously, with intent of gain and by means of force, violence and intimidation, to wit: while on board a passenger jeep cruising along Legarda Street, Sampaloc, this City, suddenly announced it was a hold-up and simultaneously poked firearms and bladed weapons on its passengers, then forcibly take, rob and carry away from CONSTANTINO LUCERO y FAYLOGA the following:

- three (3) pcs. men's rings
- two (2) pcs. gold necklace
- one (1) pc. bracelet
- one (1) pc. Seiko wristwatch

all in the total amount of P22,000.00, belonging to said Constantino Lucero y Fayloga, against his will, to the damage and prejudice of the said owner in the aforesaid amount of P22,000.00, Philippine currency.

That on the occasion of the said robbery, the said accused in pursuance to their conspiracy, did then and there willfully, unlawfully and feloniously with intent to kill, assault, attack and use personal violence upon the person of said Constantino Lucero y Fayloga, by then and there shooting the latter with unknown caliber of firearm hitting him on the right side of the neck and left chest and thereafter stabbing him with bladed weapons at the back of his body, thereby inflicting upon him serious physical injuries, which are necessary fatal and mortal which were the direct and immediate cause of his death thereafter and causing one ELSA DIOSO, also a passenger of said jeepney to be hit by a stray bullet at the neck, and will require medical attendance for a period of not less than one (1) day but not more than nine (9) days and incapacitated and will incapacitate said Elsa Dioso from performing her customary labor during the same period.

## CONTRARY TO LAW.

(Rollo, p. 7.)

Upon arraignment, Pedroso entered a plea of not guilty. Trial ensued thereafter, with the prosecution presenting five witnesses, namely, passengers Elsa Dioso and Josephine de Leon, Medico-Legal Officer Dr. Ludivico Lagat, SPO3 Edgardo Ko, and Pacita Lucero, sister of the deceased victim Constantino Lucero. For its part, the defense presented two witnesses, accused-appellant Ariel Pedroso, and his friend Rolito Roxas.

On April 23, 1996, the trial court, the Honorable Guillermo L. Loja, Sr. presiding, rendered the decision now under review, disposing:

WHEREFORE, PREMISES CONSIDERED, this Court finds the accused, ARIEL PEDROSO y CAIBO, GUILTY beyond reasonable doubt of the crime of Robbery with Homicide as defined and penalized under Article 294, par. 1, Revised Penal Code as amended by R.A. 7659, and hereby sentences him to suffer the penalty of Reclusion Perpetua to Death plus accessory penalty provided by law, and to indemnify the family of the victim, Constantino Lucero, the sum of Eighty Thousand Pesos (P80,000.00) as actual damages, and the sum of Three Hundred Thousand Pesos (P300,000.00) as moral damages, without subsidiary imprisonment in case of insolvency, and to pay the cost of suit.

SO ORDERED.

(Rollo, p. 21.)

The case for the prosecution may be synthesized as follows:

In the evening of June 2, 1994, Elsa Dioso and Josephine de Leon were going home to Sta. Mesa from Divisoria, where they had just visited a friend. They boarded a passenger jeepney plying the Divisoria-Cubao route, sitting beside each other on the right side of the jeepney. As the jeepney passed Isetann Department Store along Recto Avenue, three men got on board. One sat on the left side of the jeepney, immediately behind the driver, while the other two sat on the right side of the jeepney, one at Josephine de Leon's right, the other at Elsa Dioso's left.

As the jeepney was approaching the Nagtahan fly-over at around 9 o'clock, the person immediately behind the driver, later identified as accused-appellant Ariel Pedroso, whipped out a gun and announced, "Huwag kayong kikilos ng rnasama. Holdap ito! " Simultaneously, the man at Josephine de Leon's right pulled out a balisong while the man at Elsa Dioso's left brandished a gun. Pedroso took from the passenger seated beside him, later identified as Constantino Lucero, the latter's necklace and wristwatch. Encountering resistance while removing Constantino's other jewelry, Pedroso shot the former. Constantino was not hit, however, as he was able to push Pedroso's shooting arm, spoiling the latter's aim. Deflected, the bullet grazed Dioso's neck and hit one of Pedroso's companions instead, who exclaimed, "Pare, tinamaan mo ako. " Further efforts to remove Constantino's remaining jewelry met with difficulty, prompting one of the hold-uppers to shout `Putang ina, pare, patayin mo na 'yan. " A gunshot rang out and Constantino fell to the floor of the jeepney. In this position, he was stabbed several times by the knife-wielding cohort of Pedroso. As the attack took place, the other passengers, Elma Dioso included, jumped off the moving jeepney. However, upon noticing that Josephine de Leon had been left behind inside the jeepney, Elsa DIOSEO returned and sat at the front passenger seat of the jeepney. From that vantage point, she saw the victim being stabbed. The three hold-up men then alighted, hailed a passing jeepney, and fled.

Ramon Aduviso, the driver of the jeepney, sped to Station 8 of the Western Police District to get help. Escorted by police, Aduviso then rushed Constantino to the University of the East Ramon Magsaysay (UERM) Hospital for treatment. Constantino was, however, pronounced dead on arrival.

Informed of the incident, PO3 Edgardo Ko went to the UERM Hospital to investigate the incident. Finding Constantino dead, Ko proceeded to the scene of the crime. An examination of the jeepney revealed splotches of blood on its flooring. A deformed slug was likewise found under the passenger seat of the jeepney. Passengers Elsa Dioso and Josephine de Leon also appeared before the police and gave their account of the incident.

In the afternoon of June 13, 1994, a police informant called up the WPD and informed the officer on duty that the persons involved in the robbery-holdup could be found inside a vacant lot along Leon Guinto Street, Malate, Manila. Acting on the tip, the police rushed to the area and found two persons there, one of whom is accused-appellant Pedroso. The two were brought to the police station for investigation, and the witnesses to the holdup were called to confront the suspects.

Although placed in a police line-up of seven persons, accused-appellant Pedroso was, without hesitation, positively identified by witnesses Elsa Dioso and Josephine de Leon as one of those involved in the robbery-holdup. He was consequently arrested and a case of robbery with homicide filed against him.

In the interim, Pacita Lucero, the sister of Constantino, requested the National Bureau of Investigation (NBI) to conduct an autopsy on the body of Constantino. Dr. Ludivino Lagat, an NBI medico-legal officer, conducted the autopsy at around 9:30 in the morning of June 3, 1994. His examination revealed that Constantino had sustained two gunshot wounds and five stab wounds, all of which were fatal. The first wound was caused by a gun fired from a distance of 1-2 feet, with the point of entry at the right side of Constantino's nape and exiting at his left cheek. The second gunshot wound, which had no exit wound, was located slightly above and to the left of Constantino's groin. On the other hand, the first stab wound, located on the left of Constantino's chest, perforated the victim's vena cava and aorta. The autopsy report issued by Dr. Lagat has the following findings:

Stab wound; all elliptical, clean cut edges, with a sharp and a blunt extremities, oriented in different direction:

1)

1.6 cms., located at the anterior chest wall, left side, 2.5 cms., from the anterior median line; directed backward, downward medially, involving the soft tissues, entering the left thoracic cavity and cutting the 2nd rib, then perforating the superior vena cava and aorta, with a depth of 12.0 cm.

2)

Four (4) in number, with an area of 12.0 x 4.0 cms., shortest is 1.8 cm. and longest is 2.0 cm., located at the thoraco-lumbar region; left side; 9.0 cms. nearest and 20.0 cms., farthest from the posterior median line; directed generally forward, 3 are penetrating, 1 entered through the 8<sup>th</sup> intercostal space and 2 through the 10<sup>th</sup> intercostal space; involving the soft tissues, then to the lower lobe of the left lung twice (2x) and stomach, with a depth of 13.0 cm.

#### **GUNSHOT WOUNDS:**

1)

ENTRANCE, 1.1 x 0.9 cms., ovaloid, inverted edges, contusion collar widest at the inferior border, with tattooing measuring 5.0 x 4.0 cms., located at the nape, right side; 5.0 cm. behind and 6.0 cm. below the right external auditory meatus; directed forward, upward right to left, involving the soft tissues fracturing the maxillary and palatine bones and bones on the middle cranial fossa, left making an EXIT; 2.0 x 1.0 cms., stellate, everted edges at the left maxillary area; 5.5 cms. in front and 2.0 cms. below the left external auditory meatus.

2)

ENTRANCE, 1.0 x 1.0 cms., round, inverted edges, clean cut almost uniform in distribution, located at the left iliac region, 85.0 cm. from the left heel and 16.5 cm. from the anterior median line, directed backward, medially, slightly upward, involving the soft tissues and fracturing the iliac bone and the deformed slug was recovered in that area, 89.0 cm. from the left heel.

CAUSE OF DEATH: Stab wounds and gunshot wounds.

(p. 75, original Record.)

Pacita Lucero, the sister of the victim, testified that their family spent P80,000.00 for the burial of her brother. She presented receipts and expense reports as proof of her claim.

Testifying in his behalf, accused-appellant Ariel Pedroso asserted that at the time of the incident, he was at home in Leon Guinto Street, Malate. Accused-appellant claimed that he was only forced to admit to the crime by the police, who mauled and tortured him while he was under detention. He claimed that when he reported his ordeal at the hands of the police to the inquest fiscal, the latter ignored his complaint. Accused-appellant, however, did not present any medical certificate to prove his claim of torture.

Likewise, accused-appellant was unable to present any other witness to corroborate or confirm his alibi. The testimony of his only witness, Rolito Roxas, was limited to the alleged good and trustworthy character of accused-appellant.

Giving full faith and credence to the eyewitness accounts of Elsa Dioso and Josephine de Leon, the trial court, in its April 20, 1996 decision, found accused-appellant guilty of robbery with homicide and imposed on him the penalty of reclusion perpetua to death.

In this appeal, accused-appellant anchors his prayer for acquittal on the alleged lack of credibility of prosecution witnesses Elsa Dioso and Josephine de Leon. Specifically, he claims that he could not have been positively identified by the prosecution witnesses since they were not afforded a clear view of the hold-uppers under the circumstances. Accused-appellant asserts that the prosecution's evidence would, thus, be insufficient to support his conviction.

Accused-appellant's contentions lack merit.

Preliminarily, it must be observed that the issues raised by accused-appellant involve the credibility of witnesses, matters which are best addressed by the trial court, it being in a better position than an appellate court to decide such questions, having heard the witnesses and observed their demeanor, conduct, and attitude under grilling examination (*People v. Pili*, 289 SCRA 118 [1998]). Likewise, a trial court's findings on the credibility of witnesses are entitled to the highest degree of respect and will not be disturbed on appeal absent any clear showing that it overlooked, misunderstood or misapplied some facts or circumstances of weight or substance which could have affected the result of the case (*People v. Pulusan*, 290 SCRA 353 [1998]).

The exception spoken of above all too clearly does not apply in the present case, the identity of accused-appellant and his participation in the robbery having been established beyond reasonable doubt by the testimony of Elsa Dioso and Josephine de Leon.

In his defense, accused-appellant claims that it was impossible for the two witnesses to have seen him, the jeepney being fully loaded at the time of the incident. This contention is belied by the testimony of Josephine de Leon, thusly:

Court:

How many hold-uppers were inside the jeepney?

**A:**

There were three (3), sir.

Court:

Who shouted "hold-up" among the three?

**A:**

The one (1) besides the victim, sir.

Court:

did you come to know the name of the hold-upper besides the victim?

**A:**

Yes, sir.

Court:

Even up to this time?

**A:**

I know him now, sir.

Court:

If he is in court, can you identify him?

**A:**

Yes, sir.

Court:

Please point to him.

**A:**

There he is (witness pointing to a person whom when asked answered by the name of Ariel Pedroso the accused in this case)

Court:

You have identified that the one who shouted "hold-up" was the accused in this case, was he the one besides the victim?

**A:**

Yes, sir.

Pros.:

In what side of the jeepney was the accused Pedroso and the victim seated?

**A:**

Behind the driver, sir.

xxx xxx xxx

Pros.:

. ..where was the victim Lucero seated?

**A:**

In front of me, sir.

**Q:**

So after they announced "hold-up ito!" and brought out their arms, what happened next, if any?

**A:**

They divested Lucero of his jewelries, sir.

Court:

Who divested Lucero of his jewelries?

**A:**

The one sitting besides him, sir. (witness referring to accused Pedroso)

(tsn, Oct. 11, 1994, p. 21, 23, 25.)

The identification of accused-appellant as one of the holduppers is further bolstered by the testimony of Elsa Dioso who, on cross-examination, declared:

Atty. Fabe:

When the announcement of hold-up was given, was there light inside the jeepney?

**A:**

Yes, mam.

**Q:**

How would you describe the light?

**A:**

Very bright, main.

**Q:**

When you said Ariel Pedroso announce the hold-up, did you immediately look at him?

**A:**

Yes, mam, I saw his face.

**Q:**

When you saw the face of the accused, did you have some fear?

**A:**

Yes, ma'am.

**Q:**

Did you continue to look at him despite his announcement of hold-up?

**A:**

Yes, ma'am, but I pretended not to look at him.

**Q:**

Because you were afraid, is that correct?

**A:**

Yes, ma'am.

**Q:**

So, you looked at him at glance?

**A:**

Yes, ma'am.

**Q:**

That was about one (1) second?

**A:**

Quite longer, ma'am.

**Q:**

Did you not say that when you look at him as he announced the hold-up you did not look at him because of fear?

**A:**

Yes, sir.

**Q:**

You were not able to see clearly his face at that time he announced the hold-up, am I correct?

**A:**

It was recorded in my mind because I saw him, ma'am.

(tsn, Oct. 11, 1994, p. 25.)

As has been observed by the Court, the most natural reaction of victims of violence is to strive to look at the appearance of the perpetrators of the crime and observe the manner in which the crime is being committed (People v. Pulusan, supra.).

Neither is there any merit in accused-appellant's contention that it was highly inconceivable for Elsa Dioso, after alighting from the back of the jeepney, to transfer to the front passenger seat and observe the holdup going on. As explained by Dioso, she reboarded the vehicle and sat at the front seat thereof because her friend, Josephine de Leon, was still inside the jeepney at that time. Moreover, the workings of the human mind under emotional stress are unpredictable, such that people react differently to startling situations: some may shout, some may faint, some may be shocked into insensibility, some may openly welcome their intrusion (People v. Bersabe, 289 SCRA 695 [1998]). In this case, Elsa Dioso disregarded her own safety for the sake of a friend who was left behind in the jeepney. In all probability the action of Elsa was spontaneous, without conscious thought of the consequences of her going back to the jeepney just to be with her friend.

Given the positive identification of accused-appellant by the prosecution witnesses as one of the holduppers, his defense of alibi must necessarily fail. The defense of alibi is inherently weak and cannot prevail over the positive identification of the accused-appellant as the offender (People v. Maguad, 287 SCRA 535 [1998]). Moreover, for the defense of alibi to prosper, it is not sufficient that accused-appellant prove that he was somewhere else when the crime was committed; he must also show that it was physically impossible for him to be at the locus criminis or its immediate vicinity when the crime was perpetrated (People v. Cabebe, 290 SCRA 543 [1998]). In the case at bar, aside from his bare assertion that he was in Malate at the time of the incident, accused-appellant failed to adduce any evidence that it was physically impossible for him to be present at the place where the crime was committed at the time it happened. Leon Guinto Street in Malate is not very far from Legarda. It would not have taken a long time for accused-appellant to traverse that distance, especially so, it was getting late in the evening (9 P.M.) with the traffic already light and thinning out. Furthermore, accused-appellant did not present any other witness to corroborate his defense of alibi. Already a weak defense, alibi becomes even weaker by reason of the failure of the defense to present any corroboration (People v. Fuertes, 296 SCRA 602 [1998]).

Article 294(1) of the Revised Penal Code reads:

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...

The elements of robbery with homicide are (1) the taking of personal property is committed with violence or intimidation against persons; (2) the property taken belongs to another; (3) the taking is with animus lucrandi; and (4) by reason of the robbery or on the occasion thereof, homicide is committed (People v. Tidula, 292 SCRA 596[1998]).

It is beyond dispute that accused-appellant and his cohorts employed violence and intimidation against persons to consummate their criminal intent to take away, for personal gain, the personal property of Constantino Lucero. They brandished guns and a knife while divesting the latter of his necklace, bracelet, wristwatch, and rings.

That a homicide was committed on the occasion of the robbery is equally beyond dispute. Constantino Lucero was shot twice and stabbed five times as he was divested of his jewelry. He was pronounced dead on arrival at the UERM hospital.

We, therefore, agree with the trial court that the crime committed by accused-appellant is robbery with homicide, as defined and penalized under Article 294(1) of the Revised Penal Code.

Likewise, conspiracy has been amply and sufficiently proven in this case. Pretending to be passengers, accused-appellant and his cohorts boarded Aduviso's jeepney as it passed Isetann along Recto. When the hold-up was announced, they all pulled out and pointed weapons at the passengers. They all assaulted Constantino Lucero when the latter resisted. They alighted and fled from the jeepney together.

These acts, taken together, show that there was, among accused-appellant and his cohorts, unity of purpose and design in the execution of the unlawful act, establishing beyond reasonable doubt the existence of conspiracy (People v. Verzosa, 294 SCRA 466 [1998]).

It is settled that whenever homicide has been committed as a consequence of or on the occasion of the robbery, all those who took part as principals in the robbery will also be held guilty as principals of the special complex crime of robbery with homicide although they did not actually take part in the homicide, unless it appears that they endeavored to prevent the homicide (People v. Nang, 289 SCRA 16 [1998]). Not only is there no proof that accused-appellant tried to prevent the death of Constantino Lucero, the evidence even positively shows that he fired at least one shot at the victim.

Accused-appellant is, therefore, liable for robbery with homicide. Under Article 294(1) of the Revised Penal Code, the penalty for robbery with homicide is composed of two indivisible penalties, namely, reclusion perpetua to death. As mentioned earlier, the trial court erred when it sentenced accused-appellant to suffer the penalty of reclusion perpetua to death.

Article 63 of the Revised Penal Code provides:

Art. 63. Rules for the application of indivisible penalties.-

xxx xxx xxx

In all cases in which the law prescribes a penalty composed of two indivisible penalties, the following rules shall be observed in the application thereof:

- When in the commission of the deed there is present only one aggravating circumstance, the greater penalty shall be applied.
- When there are neither mitigating nor aggravating circumstances in the commission of the deed, the lesser penalty shall be applied.
- When the commission of the act is attended by some mitigating circumstance and there is no aggravating circumstance, the lesser penalty shall be applied.
- When both mitigating and aggravating circumstances attended the commission of the act, the courts shall reasonably allow them to offset one another in consideration of their number and importance, for the purpose of applying the penalty in accordance with the preceding rules, according to the result of such compensation.

Withal, in all cases in which the law prescribes a penalty composed of two indivisible penalties, the court is mandated to impose one or the other, depending on the presence or absence of mitigating and aggravating circumstances. Since no aggravating circumstance was alleged in the information - and to be sure if one were later

proved during the trial, it could not be appreciated so as to increase the penalty to death, and since neither was any mitigating circumstance established by the defense, the lesser penalty, or reclusion perpetua, should be imposed upon accused-appellant.

As to accused-appellant's civil liability, aside from the award of P80,000.00 as actual damages, civil indemnity in the amount of P50,000.00 should be awarded to the heirs of Constantino Lucero, the same being automatically granted to the offended party or his heirs in the case of death, without need of further evidence other than the fact of the commission of the crime and the accused-appellant's culpability therefor (*People v. Sumalpong*, 284 SCRA 464 [1998]). As to the award of moral damages, the Court finds the amount of P300,000.00 to be excessive under the circumstances, and reduces the same to P50,000.00

WHEREFORE, the decision appealed from and under review finding accused-appellant GUILTY of ROBBERY WITH HOMICIDE is hereby AFFIRMED with the modification that accused-appellant is sentenced to suffer the reduced penalty of RECLUSION PERPETUA. He is likewise ordered to indemnify the heirs of the victim the sum of Fifty Thousand (P50,000.00) Pesos as civil indemnity, Eighty Thousand (P80,000.00) Pesos as actual damages. The award of moral damages is reduced from P300,000.00 to Fifty Thousand (P50,000.00) Pesos.

**SO ORDERED.**

Davide, Jr., C.J., Bellosillo, Puno, Vitug, Kapunan, Mendoza, Panganiban, Quisumbing, Purisima, Pardo, Buena, Gonzaga-Reyes, Ynares-Santiago, and De Leon, Jr., JJ., concur.

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