

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. DINDO VALLEJO Y MASOLA, DARWIN LLARENAS Y OCENAR, ROMEO TIPASI Y QUIRAN & ARNOLD CAMO Y ACOI, APPELLANTS.

G.R. No. 125784. November 19, 2003

Ponente: SANDOVAL-GUTIERREZ, J.

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SANDOVAL-GUTIERREZ, J.:

For automatic review is the Decision[1] dated May 16, 1996 of the Regional Trial Court, Branch 15, Manila in Criminal Case No. 94-135584 finding Dindo M. Vallejo, Darwin O. Llarenas, Romeo Q. Tipasi, Jr. and Arnold A. Camo, appellants, guilty of robbery with homicide and imposing upon them the supreme penalty of death.

The Information[2] filed against appellants reads:

"That on or about April 3, 1994, in the City of Manila, Philippines, the said accused conspiring and confederating together 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 to gain and by means of force, violence and intimidation, to wit: by barging inside Bell All Sales Corporation while armed with firearms, and once inside, take, rob and carry away cash money amounting to approximately P63,000.00 and other personal properties, belonging to SANTOS DELOS SANTOS Y CHUA, to the damage and prejudice of the said owner in the aforesaid amount of P63,000.00, Philippine currency; that in the commission of the said offense, the said accused in pursuance of their conspiracy and by reason of the aforesaid robbery, did then and there willfully, unlawfully and feloniously, with intent to kill, attack, assault and use personal violence upon said Santos delos Santos y Chua by shooting the latter on the left portion of his back with a .380 caliber, thereby inflicting upon him mortal gunshot wound which was the direct and immediate cause of his death thereafter.

"Contrary to law."

Upon arraignment on June 16, 1994, appellants, assisted by their respective counsel, pleaded "not guilty"[3] to the charge. Thereafter, trial ensued. The prosecution presented eight witnesses, namely: PO3 Ramon Torrefiel, Armando Opeña, Vilma Nobleza, Rita Delos Santos (the victim's wife), PO3 Erlindo Lomboy, Arthur Portalla, Chua Yu Chun, and Dr. Marcial Lagonera. Their testimonies established the following:

Santos Delos Santos Chua was the General Manager of Bell All Sales Corporation (BASC) located at 2867 Lamayan Street, Sta. Ana, Manila. Its compound has two gates. The big gate is for incoming and outgoing vehicles and can be opened and closed manually. The small gate can be opened only by a remote electronic control situated inside the office of Chua.

On April 3, 1994 at around 2:00 o'clock in the afternoon, while Armando Opeña, driver of BASC, was cleaning a car in the garage situated two meters away from Chua's office, he overheard somebody talking through the intercom. Then the lock inside the small gate was released and he saw appellant Dindo Vallejo entering the compound through this gate. Vallejo was a former live-in employee of the corporation and oftentimes

recommended to Chua applicants for employment. Vallejo then approached the big gate and tried to open it. Armando stopped him, instructing him to ask Chua's permission. So Armando accompanied Vallejo to Chua's office. Upon seeing Vallejo, Chua asked him about the person he was recommending for work. Vallejo replied that he was recommending a utility boy. Meanwhile, Armando left and resumed cleaning the car.[4]

Moments later, Vallejo rushed back to the big gate and opened it. Several persons entered. Appellants Romeo Tipasi and Arnold Camo poked their guns at Armando and ordered him to lie down on the back seat of the car.[5] Appellants Vallejo and Darwin Llarenas went inside Chua's office, while the other two proceeded to the adjacent room where Vilma Nobleza, a checker of the corporation, was supervising employees repacking sugar. Appellants' other companions stood as look-out while the heist was going on.

Armando, then being guarded by two persons, heard a commotion inside Chua's office. Chua was shouting. Shortly thereafter, Armando heard gun shots.

Armando, Vilma and Rita de los Santos (Chua's wife) saw the bloodied Chua being carried by three persons to the warehouse adjacent to the garage. While he was lying face down, appellant Darwin Llarenas shot him.[6] At that instance, Armando heard someone shouting "takbo Na!" All the assailants fled. Arthur Portalla, victim's neighbor, saw them escaped through a yellow taxi with Plate No. NYT 417 proceeding towards Panaderos Street.[7]

Immediately, Armando and Rita brought Chua to Our Lady of Lourdes Hospital in Sta. Mesa, Manila. He died three hours later. Armando returned to the compound and found Yu Chun taking pictures, identified and marked during the hearing as Exhibits "P" - "P-20".[8]

PO3 Torrefiel, SPO1 Efren Cruz and SPO1 Julius Bustamante, of the Western Police District (WPD), conducted an investigation. They proceeded to the crime scene at Sta. Ana, Manila and found the victim's office in complete disarray. All the drawers of the tables were forcibly opened. Broken bottles were scattered on the ground.[9] They recovered the following items: a ball cap with the markings "Toronto Blue Jays", marked as Exhibit "A"; a broken telephone receiver with blood stains, marked as Exhibit "B"; a broken Seiko watch with blood stains, marked as Exhibit "C"; two live bullets of a .380 caliber revolver with dot in the primer, marked as Exhibits "D" & "D-1"; an empty shell of the same caliber, marked as Exhibit "D-2"; and a gun holster marked as Exhibit "E".[10] Later, the police took Armando's sworn statement[11] identifying all the appellants as the malefactors.

On April 4, 1994, upon the order of the Chief of Homicide Division, WPD, PO3 Lomboy, SPO1 William Gondranios, SPO1 Eduardo Liwanagan and SPO1 Norberto Panlilio arrested the appellants in their respective houses[12] without warrants of arrest. They recovered from appellant Darwin Llarenas an Omega wrist watch, marked as Exhibit "I"; from appellant Romeo Tipasi, a gold Cross ballpen with the engraved name of the victim, marked as Exhibit "H"; and a black wallet, marked as Exhibit "G".[13] All these items belonged to the victim. Then the appellants were placed in a police line-up and were identified by Armando.[14]

Vilma and Rita corroborated the testimony of Armando and positively identified the appellants as the perpetrators of the crime.

Rita testified that it was appellant Darwin Llarenas who shot her husband. [15] He was 47 years old and was earning P50,000.00 a month when he died.[16] She enumerated some of his personal belongings taken by the appellants, such as: one Omega wrist watch valued at P70,000.00; one black wallet; one gold Cross ballpen worth P1,000.00; and P63,000.00 she placed in the drawer of her husband's office table intended for the salaries of the employees. She incurred P500,000.00 for his funeral expenses.[17]

Dr. Lagonera, Medico-Legal Officer of the WPD who conducted the post- mortem examination of Chua, submitted a Report with the following findings:

"External Findings:

- Lacerated wound, left parietal region, measuring 1x0.3 cm.
 - Lacerated wound, stellate in shape, left frontal region, measuring 0.4x0.4 cm.
 - Contusso-abrasion, right forehead, measuring 9x3 cms.
 - Abrasion, right zygomatic region, measuring 2x2 cms.
 - Abrasion, bridge of the nose, measuring 6x2 cms.
 - Lacerated wound, left zygomatic region, measuring 1x0.2 cms.
 - Lacerated wound, left parietal region, measuring 3x0.4 cms.
 - Lacerated wound, mid-occipital region, measuring 0.5x0.2 cm
 - Abrasion, left infra-clavicular region, measuring 2x0.3 cms.
 - Abrasion, left posterior shoulder, measuring 2x1 cms.
 - Gunshot wound, with the point of entry at the left posterior lumbar region, 37 inches from heel, 9 cms. From posterior midline, measuring 0.5x0.6 cm. and contusion collar measures 1x0.9 cm.
- The bullet course was directed downwards, forwards crossing midline, lacerating the left kidney and renal blood vessels, and ileum and its mesentery. A copper coated slug was extracted in the sub-cutaneous tissue in the right iliac region, 35 inches from heel and 8 cms. from anterior midline.

"Internal findings:

- Injuries to organs and tissues as indicated in the internal extension of the gunshot wound, with massive bleeding in the pelvic cavity.
- The rest of the internal organs were pale.
- Small amount of partially digested rice meal with meaty materials and without alcoholic odor was recovered from the stomach."[18]

All the appellants raised the defenses of denial and alibi. They denied connivance in the commission of the crime. According to them, they did not know each other prior to their arrest.

Appellant Dindo Vallejo declared on the witness stand that at the time of the incident, he was in his brother's house at 65 V. Luna, Quezon City where he has been residing for about a year. He could not go out of the house as he was sick with pulmonary tuberculosis and was vomiting blood. In fact, he was hospitalized at the Quezon Institute from March 20-26, 1994.[19] His sister-in-law, Rose Vallejo, corroborated his testimony.[20]

Appellant Darwin Llarenas, a dried shrimps vendor, testified that on April 3, 1994, which was Easter Sunday, he and his wife and their two children attended mass at the Sta. Mesa Parish Church. They returned home at 392 Parcel Street, Sta. Mesa, Manila at around 10:00 o'clock in the morning. He cooked lunch as they were preparing a small gathering for his brother coming from the province.[21] Before lunchtime, he went to the house of Cristina Latine and invited her. After lunch, they had a drinking spree with the visitors. Meantime, he repacked dried shrimps and gave them to Adela Editha Jameliano. Both Editha and Cristina left late in the afternoon. The party ended at almost 7:00 o'clock in the evening and, thereafter, he went to bed. [22] Cristina and Editha, as well as his mother and wife, corroborated his testimony.

Appellant Arnold Camo, a barbeque vendor, testified that on April 3, 1994, he was in his house at 361 Parcel Street, Sta. Mesa, Manila because he was ill. Two weeks prior to that date, he was already sick and bedridden. [23] His left ear was swollen and he had fever. He could hardly move because of so much pain. Dr. Ramos attended to him. Several members of his family corroborated his testimony.

Appellant Romeo Tipasi gave the following version: On April 3, 1994, at 10:30 in the morning, spouses Valentin and Patrocinia Leyte fetched him from his house at 295 Parcel Street, Sta. Mesa, Manila to stand as sponsor in the christening of their child. They stayed in the church until past noon. Then he attended the reception held in the couple's house at 385 Parcel Street, Sta. Mesa, Manila until about past 6:00 o'clock in the evening. [24] Patrocinia Leyte corroborated his testimony.[25]

On May 16, 1996, the trial court rendered its Decision, the dispositive portion of which reads:

"WHEREFORE, this court finds all the accused guilty beyond reasonable doubt of the crime of Robbery with Homicide with the aggravating circumstances of abused of superior strength and craft, without any mitigating circumstance, this court hereby imposes the penalty of DEATH in accordance with Article 294 of the Revised Penal Code, as amended, in relation to Article 63 of the same code and for the accused to indemnify the heirs of the victim jointly and solidarily the following:

- (a) P50,000.00 for the death of the victim;
- (b) P156,000.00 as actual damages;
- (c) P6,072,000.00 as unrealized earnings of the victim;
- (d) P1,000.00 as moral damages;
- (e) P500,000.00 as exemplary damages; and
- (f) To pay the cost.

"SO ORDERED." [26]

Hence, this appeal. Quoted below are the assignments of error being ascribed to the trial court by the appellants:

By appellant Darwin Llarenas:

"I
THE COURT A QUO ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF ROBBERY WITH HOMICIDE AND IN IMPOSING THE DEATH PENALTY.

"II
THE COURT A QUO ERRED IN ORDERING THE ACCUSED-APPELLANT TO INDEMNIFY THE HEIRS OF VICTIM SOLIDARILY, THE FOLLOWING AMOUNTS: P50,000.00 FOR THE DEATH OF VICTIM; P156,000.00 AS ACTUAL DAMAGES; P6,072,000.00 AS UNREALIZED EARNINGS OF THE VICTIM; P1,000.00 AS MORAL DAMAGES; P500,000.00 AS EXEMPLARY DAMAGES, AND; TO PAY THE COSTS." [27]

By appellants Arnold Camo and Romeo Tipasi:

"I
THE TRIAL COURT ERRED IN FINDING THAT ACCUSED-APPELLANTS ARNOLD CAMO AND ROMEO TIPASI, JR., ACTED IN CONSPIRACY WITH THE OTHER ACCUSED IN THE COMMISSION OF THE CRIME OF ROBBERY WITH HOMICIDE.

"II

THE TRIAL COURT ERRED IN ORDERING THE ACCUSED-APPELLANTS TO SOLIDARILY PAY THE HEIRS OF THE VICTIM THE FOLLOWING AMOUNTS: P50,000.00 FOR THE DEATH OF VICTIM; P156,000.00 AS ACTUAL DAMAGES; P6,072,000.00 AS UNREALIZED EARNINGS OF THE VICTIM; P1,000.00 AS MORAL DAMAGES; P500,000.00 AS EXEMPLARY DAMAGES, AND; TO PAY THE COSTS."[28]

By appellant Dindo Vallejo:

"I

THE LOWER COURT ERRED IN FINDING THAT ACCUSED-APPELLANT ACTED IN CONSPIRACY WITH THE OTHER ACCUSED IN KILLING THE VICTIM.

"II

THE LOWER COURT ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF ROBBERY WITH HOMICIDE.

"III

THE LOWER COURT ERRED IN ORDERING THE ACCUSED-APPELLANT TO SOLIDARILY PAY THE HEIRS OF THE VICTIM THE FOLLOWING AMOUNTS: P50,000.00 FOR THE DEATH OF VICTIM; P156,000.00 AS ACTUAL DAMAGES; P6,072,000.00 AS UNREALIZED EARNINGS OF THE VICTIM; P1,000.00 AS MORAL DAMAGES; P500,000.00 AS EXEMPLARY DAMAGES, AND; TO PAY THE COSTS."[29]

The Solicitor General counters that the guilt of the appellants who acted in conspiracy, was established by evidence beyond reasonable doubt. They were positively identified by the prosecution witnesses. While there may be inconsistencies in their testimonies, the same do not affect their credibility. Moreover, appellants failed to prove by convincing evidence that it was physically impossible for them to be at the scene of the crime at the time it was committed. Lastly, there is no merit in their contention that their arrest without warrants is unconstitutional. Any infirmity attending one's arrest is cured when the accused filed a petition for bail[30] and/or when he entered a plea when arraigned.[31]

After a thorough review of the evidence on record, we affirm the conviction of all the appellants.

A. The arrest of the appellants without warrants is constitutional.

We have consistently held that any objection by the accused to an arrest without a warrant must be made before he enters his plea, otherwise, the objection is deemed waived.[32] We have also ruled that an accused may be estopped from assailing the illegality of his arrest if he fails to move for the quashing of the information against him before his arraignment. [33] And since the legality of an arrest affects only the jurisdiction of the court over the person of the accused, any defect in his arrest may be deemed cured when he voluntarily submitted to the jurisdiction of the trial court[34] as what was done by the appellants in the instant case. Not only did they enter their pleas during arraignment, but they also actively participated during the trial which constitutes a waiver of any irregularity in their arrest.[35]

B. The appellants were positively identified by the prosecution witnesses.

Even if the warrantless arrest was unlawful and the evidence obtained inadmissible, the conviction of the appellants would still be in order because they were positively identified by eyewitnesses. Verily, such identification is a vital and decisive evidence which virtually sealed appellants' culpability.

Appellants, however, contend that the prosecution witnesses could not possibly identify them. Armando was lying

face down during the commission of the crime; Rita was on the second floor when the commotion was taking place on the ground floor; and Vilma was in the adjacent room.

We are not persuaded. Armando testified on direct examination as follows:

ATTY. PANER:

Q

And what about Dindo, what did he do?

A

He opened the lock of the big gate.

Q

And what happened next after that?

A

Some other people entered.

Q

Have you been able to know more or less how many persons entered the compound after Dindo opened the gate?

A

The first batch consisted of five (5) persons and there was another batch.

Q

There were how many persons more or less?

A

About 4 persons, sir.

Q

And when these persons entered the compound, what happened next?

A

They approached me and poked their guns at me.

Q

How many persons approached you and poked a gun on you?

A

Two (2) persons, sir.

Q

If you will be able to see these two persons when you said poked their guns on you, would you be able to recognize them?

A

Yes, sir.

Q

If these persons are inside this court room, please point at them.

A

The fourth one and the 6[th] one from the left.

(Witness pointing to the persons inside the court room who when asked, gave their names as Romeo Tipasi and Arnold Gamo).

Q

While these two persons were poking their guns at you, what happened next?

A

They asked me to lie down in the car.

Q

And what happened next after that?

A

I heard Kuya Gamay (Chua) shouting.

Q

Shouting from what direction?

A

From the office, sir.

Q

And what happened next after you heard your Kuya shouting inside the office?

A

There was a commotion inside and I heard bottles being broken.

Q

What else, if any, did you hear?

A

Kuya was shouting.

Q

After that what happened next?

A

I heard gunshots, sir.

Q

From what direction?

A

From the office, sir.

Q

After you heard that shot from the direction where your Kuya Gamay was inside, what happened next?

A

I still heard shots.

Q

And what happened after you have heard your Kuya Gamay shouted?

A

I heard bottles were broken.

Q

And what happened after that?

A

I saw three (3) persons carrying Kuya Gamay.

Q

And where did they bring your Kuya Gamay?

A

They brought him to the big storage room which was beside the Ford Fiera.

Q

And what did they do with your Kuya Gamay?

A

They threw him there, sir.

Q

What happened next after that?

A

He was shot, sir.

COURT:

That was the second time you heard the shots?

A

Yes, Your Honor.

COURT:

Proceed.

ATTY. PANER:

Q

Did you see that person who shot your Kuya Gamay?

A

Yes, sir.

Q

If you will be able to see that person who shot your Kuya Gamay, will you be able to point him?

A

Yes, sir.

Q

Please look around and point this person.

A

That man, sir. (Witness pointing to a person inside the court room who when asked, gave his name as Darwin Llarenas.)

Q Now, after this person shot your Kuya Gamay, what happened next?

A They shouted `takbo na!'.

Q And to what direction did they go?

A Towards the big gate, sir."[36] (underscoring ours)

Clearly, even if Armando was forced to lie face down by the appellants, still he had a glimpse of them as they moved inside the compound. It may be recalled that he saw them when they entered the big gate. Furthermore, considering that the crime took place during the day, he could very well see appellants, especially Camo and Tipasi who poked their guns at him when they entered the compound.

Vilma's testimony is reproduced below:

"ATTY. PANER:

Q

While you were performing your duty as a checker of Bell All Sales Corp. on said date, do you know what incident took place after that?

A

Yes, sir.

Q

Will you please narrate to the Honorable Court.

A

Several male persons entered.

Q

Did you see how they were able to enter the gate?

A

Yes, sir.

Q

How?

A

Dindo Vallejo opened the big gate.

Q

How many persons entered the compound after Dindo Vallejo opened the big gate.

A

About 5 persons.

Q

And after the 5 persons entered the big gate what happened next?

A

Two of the men approached me.

Q

And what did they do when they approached you?

A

They poked their guns at me.

Q

And what about the driver Armando Opeña where was he at that time?

A

He was near the car.

Q

And did you see Armando Opeña that time?

A

Yes, sir.

Q

And what happened to him if any?

A

Guns were also poked at him.

Q

How many persons poked gun on Armando Opeña?

A

Two, sir.

Q

Now these 2 persons whom you said poked their guns on Armando Opeña, if you see them again would you be able to identify them?

A Yes, sir.

Q If they are in the courtroom, will you please point them out?

A (Witness pointing to 2 persons inside the courtroom who gave their names as Romeo Tipasi and Arnold Camo)

x x x

ATTY. PANER

Q While these 2 were guarding you what happened next?

A We heard a commotion inside the office.

Q What happened next after you heard the commotion?

A I heard a gunshot.

Q From what direction did the gunshot came from?

A From the office, sir.

Q After you heard this commotion and gunshot inside the office what happened next?

A Our employer was shouting.

Q What happened after you heard your employer shouting?

A They brought our employer outside the office to the garage.

Q What was the condition of your employer at the time he was being brought out of his office?

A He was bleeding.

Q Where did they bring your employer?

A Near the door of the warehouse, sir.

Q What happened next after they brought your employer near the door of the warehouse?

A He was strangled and shot.

Q Did you see the person who shot your employer?

A Yes, sir.

Q How far were you from this person when this person shoot your employer?

A 5 meters, sir.

Q And if you would be able to see this person again who shoot your employer, would you be able to recognize him?

A Yes, sir.

Q Will you please look around and point to us if he is around?

A Witness pointing to a person inside the courtroom who when asked, gave his name as Darwin Llarenas.

Q Now after this person whom you pointed as Darwin Llarenas shot your employer what happened next?

A Somebody shouted `takbo' and they all ran away.

Q What happened next after they ran away?

A We saw our employer already sprawled on the ground.

Q What did you do after that?

A We brought him to the hospital.

Q Who brought your employer to the hospital?

A His wife and the driver and a houseboy and his son.

Q And how about you where did you go?

A I stayed in the company.

Q Did you go to the office of Kuya Gamay?

A Yes, sir.

Q What did you find out?

A

I saw the office was in disarray and there was blood around and broken bottles."[37]
(underscoring ours)

Rita also positively identified Llarenas as one of the culprits in a clear, categorical and straightforward manner, thus:

"Q

Will you please narrate to this Honorable Court what was that unusual incident all about?

A

My eldest child called me and told me that there was a commotion going on outside. I asked him if it was outside or within our premises and he told me that it was within our premises and that he heard a gunshot.

Q What happened after that?

A I looked out the window together with my children and househelp.

x x x

ATTY. PANER:

Q When you peeped through that particular window marked as Exhibit "S-3-a", what did you see?

A I saw a man standing with a gun.

Q What was he doing there?

A He was standing. He had a gun with him.

Q What did you do if any?

A I asked my maid to call the police.

Q Why?

A Because I saw that the man had a gun and he looked to be a hold-upper.

x x x

ATTY. PANER:

Q What else did you see aside from that gunman?

A I saw three men dragging my husband to this place.

Q What did they do to your husband?

A I saw that as they were dragging my husband, he fell here (Witness pointing to the lower left most portion of the photograph marked as Exhibit "S-4").

x x x

ATTY. PANER:

Q What happened next after you saw your husband?

A He was shot.

Q Did you see the person who shot your husband?

A Yes, sir.

Q If you will be able to see that person who shot your husband, will you be able to recognize him?

A Yes, sir.

Q If that person is inside this courtroom, will you please point at him?

A

Third from the left (witness pointing to a person in the courtroom who when asked, identified himself as Darwin Llarenas).

Q What did you do after you saw your husband having been shot by that person?

A

I hurriedly went down, sir."[38] (underscoring ours)

It is thus evident that prosecution witnesses Armando, Vilma and Rita had an unobstructed view of the crime scene and the events then transpiring. Their proximity to appellants while the crime was in progress enabled them to identify them well. We have held that where the conditions of visibility are favorable and witnesses do not appear to harbor ill motives against the malefactors, their assertions as to the latter's identities should be accepted. [39]

C. The alleged inconsistencies
in the testimonies of
prosecution witnesses do not
affect their credibility.

Although there are some inconsistencies in the testimonies of the prosecution witnesses, specifically as to the exact number of persons who entered the compound, due probably to the general confusion that characterized the incident, we hold that this imperfection does not diminish their credibility. What is important is the fact that there is a sustained consistency in their testimonies relating the principal elements of the crime and positively identifying the appellants as the perpetrators.[40]

Moreover, truth-telling witnesses are not expected to give flawless testimonies, considering the lapse of time involved and the treachery of human memory. We have ruled time and again that minor inconsistencies in the narration of witnesses do not detract from their essential credibility as long as their testimonies on the whole are coherent and intrinsically believable. Inaccuracies may in fact suggest that the witnesses are telling the truth and have not been rehearsed.[41]

D. Appellants' defenses of
denial and alibi failed to
meet the requisites of time
and place.

In the face of the positive identification of appellants by the prosecution witnesses, their defenses of denial and alibi must fall. Denials, as negative and self-serving evidence, do not deserve as much weight in law as positive and affirmative testimonies. Oft-repeated is the rule that for alibi to offset the evidence of the prosecution demonstrating appellants' guilt, they must establish not only that they were somewhere else when the crime was committed but that it was also physically impossible for them to have been at the scene of the crime at the time it was perpetrated.[42] Here, the defense utterly failed to meet these requisites.

We take judicial notice of the fact that the residences of appellants Llarenas, Camo and Tipasi, which are all in Sta. Mesa, Manila, where they claimed to have been at the time of the commission of the crime, are in close proximity to Sta. Ana, Manila, the locus criminis. As for Vallejo, while he could have been in Quezon City, it was

not physically impossible for him to have been in Sta. Ana, on the day the crime was perpetrated. He could reach the crime scene after an hour travel.

E. All the elements of the crime are present.

The elements of robbery with homicide are the following: (a) the taking of personal property with violence or intimidation against persons or with force upon things; (b) the property taken belongs to another; (c) the taking be done with *animus lucrandi* (intent to gain); and (d) on the occasion of the robbery or by reason thereof, homicide in its generic sense was committed. The offense becomes a special complex crime of robbery with homicide under Article 294 (1) of the Revised Penal Code if the victim is killed on the occasion or by reason of the robbery.[43]

In this case, all the essential elements of robbery with homicide have been established by the prosecution by proof beyond reasonable doubt. Personal properties and cash belonging to the victim were taken by appellants by means of force and intimidation, and with obvious intent to gain. Moreover, in the course of the robbery, the victim was mercilessly gunned down by appellant. When homicide takes place by reason or on the occasion of the robbery, all those who took part in the robbery shall be guilty of the special complex crime of robbery with homicide whether or not they actually participated in the killing, unless there is proof that they had endeavored to prevent the perpetration of the crime.[44] Here, this exception is not present.

F. The appellants acted in conspiracy.

In the case at bar, conspiracy was clearly manifested in the concerted efforts, unity of purpose and design in the execution of the offense by the appellants. They were armed and entered the compound through the big gate. Camo and Tipasi poked their guns at Armando and stood guard over him as he was lying down in the garage. Meanwhile, Llarenas and Vallejo entered the office of the victim and shot him. The other two also poked their guns at Vilma, while the others stayed within the vicinity to act as look-outs. After the appellants and their cohorts forcibly seized the belongings of the victim, they shot him and ran away. Their simultaneous acts indicate a joint purpose and concurrence of intentions. Where the acts of the accused collectively and individually demonstrate the existence of a common design towards the accomplishment of the same unlawful purpose, conspiracy is evident, and all the perpetrators will be liable as principals. [45]

G. Penalty

Pursuant to Article 294 of the Revised Penal Code, robbery with homicide is punishable by reclusion perpetua to death. Under Article 63, paragraph 1 of the same Code, the felons should be meted the supreme penalty of death when the crime is committed with an aggravating circumstance absent any mitigating circumstance.

In the present case, the trial court specified in the decretal portion of its Decision the aggravating circumstances of abuse of superior strength and craft in the commission of the crime. Abuse of superior strength was present on account of the fact that appellants were not only numerically superior to the victim but also because all of them were armed and purposely used force out of proportion to the means of defense available to the victim. Craft was also present as shown by the fact that appellant Vallejo pretended to recommend somebody for employment as a means to enter the compound without suspicion on the part of the victim. Hence, the trial court sentenced all the appellants to suffer the supreme penalty of death.

However, appellants may be spared from the extreme punishment of death. The Revised Rules of Criminal Procedure, as amended,[46] now explicitly requires qualifying as well as aggravating circumstances to be expressly and specifically pleaded in the complaint or information, otherwise they will not be considered by the

court even if proved during the trial,[47] thus:

"Sec. 8. Designation of the offense. - The complaint or information shall state the designation of the offense given by the statute, aver the acts or omissions constituting the offense, and specify its qualifying and aggravating circumstances. If there is no designation of the offense, reference shall be made to the section or subsection of the statute punishing it.

"Sec. 9. Cause of the accusation. - The acts or omissions complained of as constituting the offense and the qualifying and aggravating circumstances must be stated in ordinary and concise language and not necessarily in the language used in the statute but in terms sufficient to enable a person of common understanding to know what offense is being charged as well as its qualifying and aggravating circumstances for the court to pronounce judgment."

Section 8 simply provides that the information or complaint must state the designation of the offense given by the statute and specify its qualifying and generic aggravating circumstances. With regard to Section 9, we held in *People vs. Nerio Suela*[48] that the use of the word 'must' indicates that the requirement is mandatory and failure to comply with it means that generic aggravating circumstances, although proven at the trial, cannot be appreciated against the accused if such circumstances are not alleged in the information. Although the rule took effect on December 1, 2000, the same may be applied retroactively[49] because it is a cardinal rule that rules of criminal procedure are given retroactive application insofar as they benefit the accused.[50]

So, while superior strength and craft were proven, however, they cannot aggravate the penalty for the crime since they were not alleged in the information. There being no modifying circumstances that attended the commission of robbery with homicide, appellants should each be meted the penalty of reclusion perpetua conformably with Article 63 of the Revised Penal Code.[51]

H. Civil liabilities

Considering that appellants acted in conspiracy, they should be held jointly and severally liable for civil liabilities. As correctly held by the trial court, appellants are jointly and severally liable to the heirs of the victim for civil indemnity in the amount of P50,000.00 and for moral damages also in the amount of P50,000.00 for the pain and sorrow they suffered which were proved during the hearing. In view of the presence of abuse of superior strength and craft in the commission of the crime, the heirs are also entitled to exemplary damages in the amount of P25,000.00.[52] Appellants are also liable to the said heirs in the total amount of P63,000.00 as actual damages, the prosecution having proven that such amount was lost. The heirs failed to prove the expenses they incurred during the wake. However, in lieu thereof, they are entitled to temperate damages in the amount of P25,000.00.[53]

Contrary to the ruling of the trial court, the heirs are not entitled to damages for the lost earnings of the victim for lack of factual basis. The estimate given by the victim's widow on his income as a businessman is not supported by competent evidence, like income tax returns or receipts. Compensation for lost income is in the nature of damages and as such, requires due proof thereof.[54] In short, there must be unbiased proof of the deceased's average income.[55] In this case, the victim's widow merely gave a self-serving statement of her deceased husband's income, hence, unreliable.

Under Article 105 of the Revised Penal Code,[56] the appellants are obliged to return to the heirs the items they took from the victim, such as the Omega wristwatch and gold Cross ballpen. However, since those lost items and valuables were already recovered from the appellants by the police investigators,[57] the latter should deliver them to the heirs.

WHEREFORE, the assailed Decision is AFFIRMED with the following MODIFICATIONS:

- Each appellant is sentenced to suffer the penalty of reclusion perpetua.
- Appellants are ordered to PAY, jointly and severally, the heirs of Chua the following amounts: (a) P50,000.00 as civil indemnity; (b) P50,000.00 as moral damages; (c) P63,000.00 as actual damages; (d) P25,000.00 as exemplary damages; and (e) P25,000.00 as temperate damages.
- The police are ordered to return immediately to the heirs of the victim the Omega wristwatch and gold Cross ballpen which were recovered from the appellants.

Costs de oficio.

SO ORDERED.

Davide, Jr., C.J., Puno, Vitug, Panganiban, Quisumbing, Ynares-Santiago, Carpio, Austria-Martinez, Corona, Carpio Morales, Callejo, Sr., Azcuna and Tinga, JJ., concur.

[1] Penned by Judge Eloy R. Bello, Jr., now Associate Justice of the Court of Appeals.

[2] Records, Criminal Case No. 94-135584 at 1.

[3] Id. at 36 and 39.

[4] TSN, July 29, 1994 at 6-8.

[5] Id. at 9.

[6] Id. at 10-11.

[7] TSN, September 23, 1994 at 4-8.

[8] Records at 55-60; TSN, September 23, 1994 at 23-25.

[9] TSN, July 22, 1994 at 16.

[10] Id. at 16-18.

[11] Exhibits "M" & "Q", Records at 109-110 & 115.

[12] TSN, August 25, 1994 at 2-4.

[13] Id. at 5-9.

[14] Records at 115.

[15] TSN, August 12, 1994 at 10-11.

[16] Id. at 16.

[17] Id. at 13-16; Exhibit "T", Records at 117.

[18] Exhibit "V", Records at 146.

[19] TSN, March 2, 1995 at 2-7.

[20] TSN, March 9, 1995 at 3-9.

[21] TSN, July 14, 1995 at 3-6.

[22] Id. at 7.

[23] TSN, February 10, 1995 at 6-8.

[24] TSN, March 14, 1995 at 2-3.

[25] TSN, March 16, 1995 at 4-12.

[26] Rollo at 95.

[27] Id. at 69-70.

[28] Id. at 164.

[29] Id. at 224.

[30] *People vs. Dural*, 223 SCRA 207 (19994).

[31] *People vs. Briones*, 202 SCRA 711 (1992).

[32] *People vs. Ereño*, G.R. No. 124706, February 22, 2000., citing *People vs. Lopez, Jr.*, 245 SCRA 95; *People vs. Rivera*, 245 SCRA 42; *People vs. Mahusay*, 282 SCRA 80; *People vs. Cabiles*, 284 SCRA 199; *People vs. Montilla*, 285 SCRA 703; *People vs. Tidula*, 292 SCRA 596.

[33] Id., citing *People vs. Hernandez*, 282 SCRA 387.

[34] Id., citing *People vs. Nazareno*, 260 SCRA 256.

[35] Id., citing *People vs. Barrientos*, 285 SCRA 221.

[36] TSN, July 29, 1994, pp. 8-11.

[37] TSN, August 5, 1994 at 11-16; Record at 131-139.

[38] TSN, August 12, 1994 at 8-11; Record at 175-178).

[39] *People vs. dela Cruz, et al.*, G.R. No. 14870, June 26, 2003.

[40] *People vs. Reyes*, G.R. No. 135682, March 26, 2003, citing *People vs. Appegu*, G.R. No. 130657, April 1, 2002.

[41] Id., citing *People vs. Ebrada*, G.R. No. 122774, September 25, 1998.

[42] Id., citing *People vs. De la Cruz*, G.R. No. 123397, October 13, 1998.

[43] *People vs. Danilo Reyes*, G.R. No. 135682, March 26, 2003, citing *People vs. Gonzales, et al.*, G.R. No. 142932, May 29, 2002.

[44] Id.

[45] Id., citing *People vs. Suela*, G.R. Nos. 133570-71, January 15, 2002.

[46] Rule 110. Sections 8 and 9.

[47] *People vs. Dela Cruz, et al.*, G.R. No. 148730, June 26, 2003, citing *People vs. Legaspi*, G.R. Nos. 136164-65, April 20, 2001.

[48] G.R. Nos. 133570-71, January 15, 2002.

[49] *People vs. Daniela*, G.R. No. 139230, April 24, 2003, citing *People vs. Mauricio*, 353 SCRA 114.

[50] *People vs. Buayaban*, G.R. No. 112459, March 28, 2003, citing *People vs. Suela*, G.R. Nos. 133570-71, January 15, 2002.

[51] "Art. 63. Rules for the application of indivisible penalties. - In all cases in which the law prescribes a single indivisible penalty, it shall be applied by the courts regardless of any mitigating or aggravating circumstances that may have attended the commission of the deed.

"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:

x x x

2. When there are neither mitigating nor aggravating circumstances in the commission of the deed, the lesser penalty shall be applied.

x x x."

[52] *People vs. Catubig*, G.R. No. 137842, August 23, 2001, 363 SCRA 621.

[53] Article 2234, New Civil Code.

[54] *People vs. Listerio*, G.R. No. 122099, July 5, 2000, citing *Heirs of Raymundo Castro vs. Bustos*, 27 SCRA 327 and *De la Paz vs. IAC*, 154 SCRA 65.

[55] *Id.*, citing *People vs. Villanueva*, 302 SCRA 380.

[56] "Art. 105. Restitution - How made. - The restitution of the thing itself must be made whenever possible, with allowance for any deterioration, or diminution of value as determined by the court.

"The thing itself shall be restored, even though it be found in the possession of a third person who has acquired it by lawful means, saving to the latter his action against the proper person who may be liable to him.

"This provision is not applicable in case in which the thing has been acquired by the third person in the manner and under the requirements which, by law, bar an action for its recovery."

[57] Records at 8.

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