

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. SALES SABADAO, VIDAL VALDEZ, CARLOS MAYO AND ALBERT ABANGON, ACCUSED. SALES SABADAO AND VIDAL VALDEZ, ACCUSED-APPELLANTS.

G.R. No. 126126. October 30, 2000

Ponente: BUENA, J.

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BUENA, J.:

This is an appeal from the joint Decision[1] dated July 21, 1995, of the Regional Trial Court of Batac, Ilocos Norte, Branch 18,[2] in Criminal Case No. 2547-18, for robbery with homicide; Criminal Case Nos. 2548-18 and 2549-18, both for illegal possession of firearm and ammunition in violation of Presidential Decree No. 1866; finding accused-appellants, Sales Sabadao and Vidal Valdez guilty beyond reasonable doubt of robbery with homicide and illegal possession of firearm; and sentencing each of them to suffer the penalty of reclusion perpetua and to pay, solidarily, the heirs of Romeo Aganon and Pfc. Arnulfo Valera, the amounts of P7,617.50 and P24,000.00, respectively, as actual damages; and P50,000.00 as moral damages in Criminal Case No. 2547-18, for robbery with homicide. The trial court further sentenced them accordingly in Criminal Case Nos. 2548-18 and 2549-18 for illegal possession of firearm and ammunition.

The antecedent facts are as follows:

Accused-appellants, Sales Sabadao and Vidal Valdez, together with Carlos Mayo[3] and Albert Abangon, were charged with robbery with homicide, penalized under Article 294, paragraph 1 of the Revised Penal Code, in an information which reads:

"CRIMINAL CASE NO. 2547:

"That on or about 9:55 o'clock in the morning of June 23, 1987, in the municipality of Batac, province of Ilocos Norte, Philippines and within the jurisdiction of this Honorable Court, the above-named accused conspiring, confederating and mutually helping one another, with intent of gain did then and there willfully, unlawfully and feloniously, by means of intimidation and violence, each armed with [an] unlicensed firearm, enter the Rizal Commercial Banking Corporation, Batac Branch, Batac, Ilocos Norte, divested at gun point Security Guard Romeo Aganon of his firearm (Shotgun) Gauge 12, Serial No. 876374 including two (2) live ammunitions inside its chamber, valued at EIGHT THOUSAND (P8,000.00) PESOS, Philippine Currency, and Security Guard Flordelino Dagulo of his service revolver, Caliber 38, Serial No. 954889 with six (6) live ammunitions valued at SIX THOUSAND PESOS (P6,000.00), Philippine Currency, to the damage and prejudice of the PEPTOK Integrated Services, Inc., of the total value of the two firearms aforesated, and by then and there take and carry away the sum of FOUR THOUSAND TWO HUNDRED PESOS (P4,200.00) Philippine Currency, belonging to the Rizal Commercial Banking Corporation, Batac Branch, Batac, Ilocos Norte, against the consent and will of the Manager and Cashier thereof, to the damage and prejudice of the said Bank in the aforesated sum of money, and in pursuance of their (accused) conspiracy, said accused directed the personnel of the bank to open the vault used by the Rizal Commercial Banking Corporation for keeping

money and while the accused were searching the vault for money, peace officers responded to the alarm of robbery arrived, the accused to enable them to take and carry away the sum of money and firearms above-mentioned, shot several times the responding peace officers of the Integrated National Police of Batac, Ilocos Norte, as a result thereof PFC. ARNULFO VALERA, one of the responding peace officers was shot on the different parts of his body resulting to (sic) his death later and shot Security Guard ROMEO AGANON who was lying flat face downward near the vault of the bank resulting to (sic) his death; PFC. ARNULFO VALERA in his effort to save himself shot CHARLO MORALES, a co-conspirator of the robbery, resulting to (sic) the instantaneous death of said CHARLO MORALES.

"CONTRARY TO LAW."[4]

Accused-appellant Vidal Valdez was also charged before the same trial court with illegal possession of firearm and ammunition (in violation of Presidential Decree No. 1866) in an information which reads:

"CRIMINAL CASE NO. 2548:

"That on or about 10:55 o'clock in the morning of the 23[rd] day of June, 1987, in the municipality of Batac, province of Ilocos Norte, Philippines and within the jurisdiction of this Honorable Court, the above-named accused being then a private citizen, did then and there willfully, unlawfully and feloniously have in his possession, custody and control outside his residence a firearm, Caliber 22, Revolver (Tell) with Serial No. 143582 with eight (8) live ammunitions, without first having obtained the necessary permit or license to possess and which said accused used in the commission of Robbery with Multiple Homicide case.

"CONTRARY TO LAW."[5]

Accused-appellant Sales Sabadao was likewise charged before the same trial court with illegal possession of firearm and ammunition (in violation of Presidential Decree No. 1866) in an information which reads:

"CRIMINAL CASE NO. 2549:

"That in the morning of June 23, 1987, in the municipality of Batac, province of Ilocos Norte, Philippines and within the jurisdiction of this Honorable Court, the above-named accused being then a private citizen, did then and there willfully, unlawfully and feloniously have in his possession, custody and control outside his residence a firearm, Caliber 45 Pistol (Ithaca), Made in U.S.A. with Serial No. 2099911 with five (5) live ammunitions, without first having obtained the necessary permit or license to possess and which said accused used in the commission of Robbery with Multiple Homicide.

"CONTRARY TO LAW."[6]

Upon arraignment, accused-appellants pleaded not guilty to all the charges leveled against them.[7] Thereafter, the trial court heard the petition for bail filed by accused-appellants. During the hearing for accused-appellants' petition for bail, the prosecution presented nine (9) witnesses, six (6) of whom are officers/employees of Rizal Commercial Banking Corporation, Batac Branch (hereinafter RCBC); the medico-legal officer who conducted an autopsy of one of the victims' body; and two (2) members of the Integrated National Police who were at the scene of the crime at the time of its commission. On December 14, 1988, the trial court resolved to grant accused-appellants' petition for bail.[8] At the continuation of the trial, the prosecution presented three (3) additional witnesses, two (2) of whom testified on the expenses they incurred on account of the death of victims; and the third was the commander of the security agency which hired the bank's security guards. For the defense, on the other hand, both accused-appellants testified, together with two (2) others who corroborated accused-appellants' respective testimonies.

Evangelina Y. Rubio, branch manager of RCBC, testified that on June 23, 1987, at around 9:55 in the morning, accused-appellant Vidal Valdez went to her office accompanied by one of the bank's security guards, Flordelino

Dagulo. According to Rubio, accused-appellant Valdez presented a letter allegedly coming from the bank's main office supposedly to check the bank's burglar alarm system. Suddenly, two (2) men rushed inside the bank, coming in through the main door, while simultaneously, accused-appellant Valdez ordered her to lie down on the floor.[9] Accused-appellant Valdez, then, told her to get up and go out of the bank. On her way out, she was ordered by another man, whom she was not able to recognize, to get back and lie down on the floor, near the table of the bank's branch operation head. While lying on the floor, she heard someone give an order to look for the bank cashier and for the branch operation head to open the vault. Thereafter, she heard the vault being opened. Afterwards, she heard a burst of gunfire which lasted for about 10 to 15 minutes.[10] When she noticed that the malefactors were already gone, she went inside her office and called the police authorities. Rubio recalled that the other bank security guard, Romeo Aganon was stationed at the bank's main door. When two (2) of the malefactors rushed inside the bank, they had a struggle with Aganon resulting in Aganon's death. Two (2) other persons were also killed during the robbery - policeman Arnold Valera and Carlos Mayo, one of the malefactors.[11] After the robbery, they did an inventory and found out that the bank lost P4,200.00 in cash.[12]

Ronaldo Cajigal, branch operation head of RCBC, testified that on June 23, 1987, at around 9:55 in the morning, he was having coffee at the bank's kitchen when he heard shouts coming from the banking area. When he opened the door, he saw accused-appellant Sales Sabadao, who pointed a gun at him and told him to lie down.[13] Later, he opened the bank's vault pursuant to the order of the malefactors. At that instance, he saw one of the malefactors, a certain Charlo, get a bundle of cash from the teller's booth.[14][14]TSN, October 6, 1997, pp. 19-20.14 Then, Cajigal looked for the bank cashier to open the outer grill door of the vault. When the grill door was opened, he heard someone shout that policemen were coming. Immediately, he lay down on the floor and saw security guard Romeo Aganon, who told him in Ilocano, "brother, I am hit." [15] Two (2) days after the incident, or on June 25, 1987, he made a certification[16] that the bank incurred a loss of P4,200.00 due to the robbery.

Flordelino Dagulo, one of the security guards of RCBC, testified that in the morning of June 23, 1987, accused-appellant Vidal Valdez went up to him and asked if the bank manager had already received a certain letter. Dagulo talked with the bank manager and was told to accompany accused-appellant Vidal Valdez inside the bank manager's office. Inside the bank manager's office, accused-appellant Vidal Valdez showed a folder to the bank manager but the latter could not accommodate him because she had not received such letter. While Dagulo was inside the bank manager's office with accused-appellant Vidal Valdez, the other security guard, Romeo Aganon was posted at the main door of the bank. Subsequently, the bank's burglar alarm went off. Dagulo saw two (2) persons, one of whom he identified as accused-appellant Sales Sabadao,[17] pointing a .45 caliber revolver at Aganon and who grabbed the latter's shotgun. Dagulo further testified that accused-appellant Vidal Valdez grabbed his .38 caliber service pistol,[18] kicked him and ordered him to lie down on the floor. Then, one of the malefactors demanded that the bank's vault be opened. While lying on the floor, Dagulo saw Aganon who told him "I was hit brother, please help me." [19] After the malefactors left the bank, Dagulo stood up to help Aganon and saw Pfc. Arnulfo Valera lying on the floor with blood oozing from his body.[20] Dagulo also noticed another dead person, whom he later came to know as Charlo Mayo, lying on the floor.[21]

Evelyn Artates, bank cashier of RCBC, testified that on June 23, 1987, at around 9:55 a.m., while seated at her table in the bank, she heard a voice screaming and saw one of the malefactors holding a gun and who ordered them to lie down on the floor.[22] She knelt for about 30 minutes until she was ordered to open the bank's vault. When she stood up, she saw a man whose name she came to know later as Charlo Morales, come down from the teller's booth, holding a bundle of money.[23] After opening the vault, she lay down on the floor. Two (2) men went inside the vault and while they were inside, she heard one of the malefactors shout that the police were coming. Thereafter, there was an exchange of gunfire which lasted for about 30 minutes.[24] After the malefactors left the bank, and the police authorities came in, she and the other bank employees went out of the

bank for about an hour. Subsequently, they went back inside the bank, counted the money on the tellers' booth, and discovered that there was a shortage of P4,200.00 in cash.[25]

Florendo A. Gabriel, an employee of RCBC, testified that on June 23, 1987, at around 10 a.m., he was having a coffee break in the bank's kitchen when one of his co-employees went inside the kitchen and announced that there was a robbery going on inside the bank. After seeing them, accused-appellant Sales Sabadao pointed a gun at them and told them to go inside the banking area and lie down on the floor. While lying on the floor, Gabriel heard an exchange of gunfire.[26] Thereafter, he was ordered by accused-appellants, Vidal Valdez and Sales Sabadao to open the backdoor of the bank.

Dr. Artemio Gambalan, Municipal Health Officer of Batac, Ilocos Norte, conducted the autopsy on the body of Pfc. Arnulfo Valera and prepared an autopsy report[27] dated June 23, 1987 with the following findings:

"GROSS FINDINGS:"

"1. Gunshot wound, communicating, with an entrance of about 7-8 mm. In diameter, 2 inches below the anterior, superior iliac spine, left. Exit wound is about 1.5 inches posterior from the entrance wound.

"2. Gunshot wound, communicating, with a diameter of about 7-8 mm., 2 inches posterior to the ant sup iliac spine. i.e. entrance wound. Exit wound 2.5 inches infero-posterior of the entrance wound of about 8 mm. in diameter, (buttocks area).

"3. Gunshot wound, antero-medial, left thigh, 3 inches below the inguinal line, with a diameter of about 11-12 mm. Composed of contusion collar but no evidence of tattooing (sic) of said wound. Exit wound, posterior aspect, left thigh with jagged edges, about 50 mm. in diameter.

"4. Gunshot wound, infrastructure 2/3 of left thigh, ant, about 13-14 mm in diameter with contusion collar noted. Exit wound, latero-posterior of inferior 2/3 of left thigh, with a diameter of about 15 mm.

"5. Gunshot wound, with contusion collar, inferior 1/3 upper arm, left with a diameter about 12 mm. Exit wound, 2 inches below the cubital fossa, with a diameter of about 15 mm.

"DISSECTION FINDINGS:

"1. Comminuted fracture of the femur, left, superior 2/3. With complete resection of femoral vein, femoral artery and nerves.

"2. Comminuted fracture, inferior 1/3 humerus, left, with complete resection of brachial artery including the ulnar nerve and median nerve.

"3. Comminuted fracture, superior 1/3 of the radial and ulnar bones. Total resection of all the structures of the elbow joint, left.

"IMMEDIATE CAUSE OF DEATH:

"Cardio-respiratory Arrest secondary to Hypovolemic Shock (Massive external hemorrhage) of Multiple Comminuted fractures on Multiple Gunshot wounds."[28]

Incidentally, the defense admitted the autopsy report involving the other victim, Romeo Aganon, thus, the testimony of the examining physician, Dr. Jesus Tomas, was dispensed with.[29]

Sgt. Crisanto C. Casela, a member of the Integrated National Police and assigned at the Batac Police Station, testified that on June 23, 1987, at 9:55 in the morning, the burglar alarm system of RCBC continuously rang, hence, he and four (4) other policemen went over to the bank. Upon reaching the bank, Pfc. Arnulfo Valera went directly towards the main door where he was met by gunfire. Later, when Casela and the other policemen entered the bank, they found the dead body of Valera.[30] While inside the bank, Sgt. Casela also saw the dead bodies of

Charlo Morales and Romeo Aganon.[31] After inspecting the bank premises, they were able to recover a shotgun.[32] The following day, a .38 caliber revolver was also recovered from a municipal street between Barangays Lacub and Aglipay.[33] Sgt. Casela ordered the other policemen to conduct a surveillance on the area where the malefactors were believed to have escaped to. When they returned to the police headquarters, at around 11:30 a.m. of the same day, they saw accused-appellant Sales Sabadao inside the headquarters. Sgt. Casela further testified that he also saw accused-appellant Vidal Valdez later in the afternoon. According to Sgt. Casela, Valdez revealed to him, at about 8 p.m. of that night, that he left his gun in a small store near the bank.[34] They accompanied Valdez to this store where they were able to recover a Magnum .22 caliber revolver.[35]

Pfc. Bernardo A. Marcos, a member of the Integrated National Police and assigned at the Batac Police Station, corroborated Sgt. Casela's testimony that in the morning of June 23, 1987, he and other policemen went to RCBC in response to an alarm; and while entering the bank, they were met by gunfire, resulting in the death of Pfc. Valera.[36]

Soledad Pascual, bank teller in RCBC, testified that on June 23, 1987, at about 9:55 a.m., she was in a teller's booth inside the bank, when four (4) armed men ordered them to lie down on the floor, then told the bank cashier to open the vault. Pascual also recounted that one (1) of the armed men went to her booth, opened the drawer and took a stack of P100.00 bills amounting to P4,200.00, which she happened to count before the robbery took place.[37] When the vault was opened, she saw the armed men enter the outer vault, then heard them say, "policemen are coming." [38] Thereafter, she heard an exchange of gunfire which lasted for about 25 to 30 minutes. Then, she saw a man whom she came to know later as Charlo Morales, lying on the floor and heard him moaning. One of the armed men went near Charlo Morales, took the money from his left pocket and the gun from his right hand.[39] Thereupon, the armed men fled through the back door of the bank. On cross-examination, she recounted that four (4) armed entered the bank, two (2) of whom entered simultaneously, one (1) was inside the manager's room and the other was sitting at the lobby.[40]

Upon termination of the hearing for accused-appellants' petition for bail, the trial court rendered a Resolution dated December 14, 1988, granting the petition.[41]

Upon resumption of the trial, with the prosecution adopting the testimonial evidence already presented during the hearing for accused-appellants' petition for bail, the prosecution presented three (3) additional witnesses: Evelyn G. Aganon, Irene Valera and Fidel Cabansag.

Evelyn G. Aganon, widow of the slain bank security guard, Romeo Aganon, testified that she incurred burial and funeral expenses amounting to P19,170.00 on account of the death of Romeo Aganon.[42] She further testified that Romeo Aganon earned P1,000.00 a month as a security guard.[43] Likewise, Irene Valera, widow of the slain policeman, Pfc. Arnulfo Valera, testified that she spent P78,725.00 as burial and funeral expenses, resulting from the death of Pfc. Arnulfo Valera.[44] Fidel Cabansag, detachment commander of Alpha Investigation and Security Agency, testified that his agency issued a shotgun and a revolver to security guards, Romeo Aganon and Flordelino Dagulo.

In their defense, both accused-appellants, Sales Sabadao and Vidal Valdez testified, in addition to Evelyn Sales, for Sabadao's defense, and Severino Gumil, for Valdez's defense.

Accused-appellant Vidal Valdez, on direct examination, admitted that on June 23, 1987, at around 9:30 a.m., he was at RCBC to solicit funds for a seminar workshop sponsored by his group called GUMIL.[45] According to Valdez, he went to see the bank manager inside her office and handed to her a solicitation letter. After reading the letter, the bank manager told him to return the following week; thereupon, he left the bank and took a ride home.[46] Upon reaching his house in San Nicolas, he did his daily routine, i.e. wrote scripts for radio. He did not

leave the house until nightfall, when he went with a certain Pat. Ragutero to the municipal hall to see OIC mayor Hernando who allegedly wanted to see him for personal reasons.[47] At the office of the mayor, Valdez saw acting provincial warden Jaramilla who invited him for questioning because he was allegedly one of the suspects in a bank robbery. He was brought to the Integrated National Police headquarters in Batac where he was turned over to Sgt. Crisanto Casela for questioning. Valdez denied having told Sgt. Casela that he left a gun in a store near RCBC.[48] Valdez further denied knowing his co-accused-appellant Sales Sabadao. On cross-examination, he reiterated that he was at the bank at around 9:30 a.m., on June 23, 1987, to solicit funds;[49] and he stayed inside the bank manager's office for only about 10 minutes.[50]

Severino Pablo, outgoing president of the group called GUMIL, confirmed that the GUMIL members agreed to solicit funds for the seminar workshop which they were planning to conduct. He further disclosed that he wrote the solicitation letter on July 15, 1987 and admitted that he was not with accused-appellant Vidal Valdez on June 23, 1987 when the crime was committed.[51]

On the other hand, accused-appellant Sales Sabadao interposed alibi in his defense. Sabadao testified that on June 23, 1987, he left his residence in Baguio City, and went to visit his aunt and grandfather in Batac, Ilocos Norte.[52] He left Baguio City at past 4 a.m. Upon reaching Batac, he rode a tricycle to Baay, Ilocos Norte. When he alighted from the tricycle, the driver told him to ask for the person he was looking for, when he reached a certain "hilly place." Sabadao walked for about three (3) kilometers until he reached that certain hill where he asked an old woman for the house of the Sales family. He was told to go back to the highway and take a tricycle to Baay. On his way back to the highway, he met more than four (4) men, two (2) of whom poked a gun at him.[53] They told him they were NPAs, gave him a "black belter," took his traveling bag and searched him. Thereafter, they brought him to the highway, boarded a jeep, and brought him to a certain place where he saw policemen who insisted that he was one of the robbers.[54] Afterwards, he was brought to a detention cell. Sabadao denied that he was apprehended by the police authorities at the southeastern portion of the bank and that a .45 caliber revolver was confiscated from him.[55] Sabadao further denied knowing his co-accused. On cross-examination, Sabadao testified that he alighted from the bus in Batac at past 10 o'clock in the morning of June 23, 1987.

Evelyn Sales, aunt of accused-appellant Sales Sabadao, testified that she went to see Sabadao in jail at past 7 p.m. on June 23, 1987.

On January 16, 1996, the trial court rendered a joint Decision[56] dated July 21, 1995, finding accused-appellants guilty beyond reasonable doubt of robbery with homicide, sentencing them to suffer the penalty of reclusion perpetua, and ordering them to pay, solidarily, the heirs of Romeo Aganon and Pfc. Arnulfo Valera, the amounts of P7,617.50 and P24,000.00, respectively, as actual damages, and P50,000.00 as moral damages. The same Decision also found accused-appellants guilty beyond reasonable doubt of illegal possession of firearm, and sentenced them accordingly. The dispositive part of the said Decision reads:

"WHEREFORE, the Court hereby adjudges VIDAL VALDEZ and SALES SABADAO 'GUILTY' beyond reasonable doubt in Criminal Case No. 2547 of the crime of Robbery with Homicide as defined and penalized in paragraph 1 of Article 294 of the Revised Penal Code with the aggravating circumstance of having committed the crime in band and are hereby sentenced to suffer the penalty of DEATH which is commuted to RECLUSION PERPETUA pursuant to the provisions of Section 19 (1) of Article 3 of the 1987 Constitution.

"VIDAL VALDEZ is hereby also adjudged 'GUILTY' beyond reasonable doubt of the crime of Illegal Possession of Firearm in Criminal Case No. 2548 pursuant to paragraph (1) of Section 1 of P.D. 1866 and sentenced to suffer the indeterminate penalty of ten (10) years and one (1) day of prision mayor maximum as minimum to eighteen (18) years eight (8) months and one (1) day of reclusion temporal as maximum (People

vs. Edwin Mesal, G.R. No. 106643, May 16, 1995 [p. 140 Case Digest of Supreme Court Decisions, May 2-31, 1995] as against RECLUSION PERPETUA imposed in People vs. Tirso Acol, et al., G.R. No. 106288-89, May 17, 1994, Vol. 23, No. 2]).

"Likewise, SALES SABADAO is hereby adjudged 'GUILTY' beyond reasonable doubt of violation of paragraph (2), Section 1 of P.D. 1866 and sentenced to suffer the penalty of DEATH in Criminal Case No. 2549 which is commuted to RECLUSION PERPETUA pursuant to the said provisions of the 1987 Constitution (Reclusion Perpetua, and not life imprisonment, is imposed to be consistent with the penalty prescribed in paragraph 1 of said Section 1 of the law).

"VIDAL VALDEZ and SALES SABADAO are also finally adjudged to pay, solidarily, Seven Thousand Six Hundred Seventeen Pesos and Fifty Centavos (P7,617.50) to the heirs of Romeo Aganon and Twenty Four Thousand Pesos (P24,000.00) to the heirs of Pat. Arnulfo Valera by way of actual damages and also Fifty Thousand Pesos (P50,000.00) by way of moral and other forms of damages to each of the respective heirs of the said two (2) victims.

"Caliber .22 Tell Revolver with Serial No. 143852 and Caliber .45 pistol, Ithaca with Serial No. 2099911 are hereby declared forfeited in favor of the Philippine National Police for appropriate disposition.

"SO ORDERED." [57]

In its joint Decision, the trial court found that during the June 23, 1987 incident inside RCBC, the service firearms of the bank's security guards were forcibly taken by the malefactors before the exchange of gunfire, resulting in three (3) fatalities, had occurred.[58] The trial court further found that conspiracy attended the commission of the crime, pointing out the malefactors' "previously designed scheme of entry and plan of operation." [59] The trial court also held that the commission of robbery with homicide was attended by the aggravating circumstance of band, having been perpetrated by four (4) armed malefactors who acted together in the commission of the crime. The trial court rejected the defense of alibi interposed by accused-appellants, relying instead on the positive identification of accused-appellants as two (2) of the perpetrators of the crime.[60] Regarding the .22 caliber revolver which was recovered by the police authorities upon information obtained from accused-appellant Vidal Valdez, the trial court ruled that there was no evidence on record showing that the said firearm was used during the commission of the robbery with homicide.[61] However, with regard to the .45 caliber revolver taken from accused-appellant Sales Sabadao upon his arrest, the trial court ruled that the said firearm was used in the fatal shooting of security guard Romeo Aganon and Pfc. Arnulfo Valera.

Hence, this appeal. In their appellants' brief, accused-appellants raise the following assignment of errors:[62]

I

THE COURT A QUO ERRED IN ADMITTING THE .45 CALIBER PISTOL IN EVIDENCE AGAINST SALES SABADAO IN CRIMINAL CASE NO. 2549-18.

II

THE COURT A QUO ERRED IN ADMITTING THE .22 CALIBER REVOLVER AGAINST VIDAL VALDEZ IN CRIMINAL CASE NO. 2548-18.

III

THE COURT A QUO ERRED IN CONVICTING SALES SABADAO AND VIDAL VALDEZ OF ILLEGAL POSSESSION OF FIREARMS IN CRIMINAL CASE NOS. 2548-18 AND 2549-18 RESPECTIVELY, INSPITE OF THE ABSENCE OF ANY CERTIFICATION FROM THE FIREARMS

AND EXPLOSIVES UNIT OF THE PNP THAT THE SEIZED FIREARMS WERE UNLICENSED.

IV

THE COURT A QUO ERRED IN CONVICTING ACCUSED SALES SABADAO AND VIDAL VALDEZ OF ROBBERY WITH HOMICIDE DESPITE FAILURE OF THE PROSECUTION TO ESTABLISH THE GUILT OF THE ACCUSED BEYOND REASONABLE DOUBT.

The appeal is partly meritorious. The Court finds accused-appellants liable for robbery with homicide, but not for illegal possession of firearm and ammunition.

In view of the enactment of Republic Act No. 8294 on July 6, 1997, amending certain provisions of Presidential Decree No. 1866, thereby considering the use of an unlicensed firearm simply as an aggravating circumstance in the murder or homicide case, and not as a separate offense;^[63] the Court sees no need to discuss the first three (3) issues raised by accused-appellants. We reiterate that there can be no separate conviction for illegal possession of firearm under Presidential Decree No. 1866, as amended, if homicide or murder is committed with the use of an unlicensed firearm, such use of an unlicensed firearm being merely considered as an aggravating circumstance in the murder or homicide case.^[64]

Coming now to the fourth assigned error, accused-appellants contend that the trial court erred in convicting them of robbery with homicide despite the failure of the prosecution to establish their guilt beyond reasonable doubt. As stated at the outset, we are not persuaded by accused-appellants' arguments on this point. Robbery with homicide, a special complex crime, is primarily a crime against property and not against persons, homicide being a mere incident of the robbery with the latter being the main purpose and object of the criminal.^[65] The essential elements of robbery with homicide are: (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.^[66]

Upon a careful scrutiny of the records, the Court is convinced beyond reasonable doubt that accused-appellants were indeed guilty of the crime of robbery with homicide. As aptly observed by the trial court:

"xxx xxx.

"Certain conclusions are inevitable from the appraisal and evaluation of the facts narrated in the respective testimonies of the witnesses for the prosecution. First is the fact of loss by the bank in the amount of P4,200.00 and the divestment, although momentarily, of the firearm issues of Security Guards Flordelino Dagulo and the deceased Romeo Aganon, a .38 Caliber Revolver and a shot gun, respectively, both valued in the amount of P14,000.00. Pat. Arnulfo Valera and Security Guard Romeo Aganon were fatally shot on the occasion of the forcible taking of the cash and firearm(s) and the more adventurous purpose of looting the volume of fortune kept in the vault. Vidal Valdez was proved to be in possession of, without any license or authority therefor, the .22 Caliber Magnum Tell Revolver bearing number 143852 with live ammunitions in its chamber. Also, Sales Sabadao was in illegal possession of the .45 Caliber Pistol with trademark "Ithaca" and with serial No. 2099911. Four armed robbers intruded into the RCBC in Batac, Ilocos Norte that June 23, 1987.

"xxx xxx."^[67]

Accused-appellants argue that they were not adequately identified as the perpetrators of the robbery with homicide, claiming that there was no clear and convincing proof that either of them caused the death of any of the victims, and "the prosecution was not able to establish who actually shot who during the melee which accompanied the robbery."^[68] The argument is unacceptable. The rule is well-established 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 clearly appears that they endeavored to prevent the homicide.[69] In the case at bar, it has not been shown that accused-appellants tried to prevent the shooting of the three (3) fatalities. Moreover, the finding of conspiracy made by the trial court is well-grounded. Conspiracy can be inferred from the acts of the malefactors before, during, and after the commission of the crime which are indicative of a joint purpose, concerted action, and concurrence of sentiments.[70] In the instant case, the cooperative acts of accused-appellants toward their common criminal objective render them equally liable as conspirators. We quote with approval the following observation by the trial court:

"xxx xxx.

"Various episode[s] or chapter[s] in the RCBC raid depict in vivid and clear details the existence or manifestation of a conspiracy. Such details reveal a previously designed scheme of entry and plan of operation, first, Vidal Valdez gaining foothold by holding in captivity Evangeline Rubio, the Manager and also one of the security guards, Flordelino Dagulo. Further deployment of reinforcement is shown by the concerted entry of two (2) more of the conspirators then followed by the fourth [conspirator] to complete [the] strength of force that constituted the conspiracy and calculated to make effective their nefarious venture. With this entry and beachhead in place, the implementation of the plan of action then started with the taking of valuables, first, divesting the two (2) security guards of their firearms to weaken, if not to destroy the capability of the captives and then thereafter effecting their final mission or purpose, grabbing of (sic) bundles of cash and the opening of the vault. This taking of the cash of (sic) P4,200.00 by the dead robber, Charles Bayed and then thereafter by the fourth robber, Charlo Mayo [should be Albert Abangon], and the taking of the firearms of the two (2) security guards completed the act constituting robbery though a more extensive loot would have been gained in (sic) the opening of the vault of the bank."[71]

Hence, in view of the presence of conspiracy, all the perpetrators of the crime shall bear equal responsibility.

Furthermore, accused-appellants insist that they should be held liable only for attempted robbery because they "were not able to perform all the acts of execution,"[72] and "the prosecution was not able to concretely establish that the accused robbers were able to take any money away." [73] The contention is untenable. Well-settled is the rule that generally, the factual findings of the trial court will not be disturbed since it is in a better position to appreciate the conflicting testimonies of the witnesses, having observed their deportment and manner of testifying.[74] Applying the foregoing principle to this case, no cogent reasons appear for this Court to depart from the findings of the trial court that the malefactor took P4,200.00 in cash and the service firearms of the bank's security guards, which findings are final and conclusive. Besides, we find no circumstance of weight or significance that would impair the correctness and validity of the findings of fact and conclusions of the trial court.

Accused-appellants also fault two (2) prosecution witnesses for, either giving incomplete statements or not giving any statement to the police authorities.[75] We are not persuaded. It is a matter of judicial experience that an affidavit, being taken ex-parte, is almost always incomplete and often inaccurate.[76] To be sure, a sworn statement taken ex parte is generally considered to be inferior to a testimony given in open court as the latter is subject to the test of cross examination.[77]

As to the civil liability imposed by the trial court, some modifications are in order. The trial court erred in not awarding in favor of the victims' heirs civil indemnity under Article 2206 of the Civil Code, which current jurisprudence has fixed at P50,000.00. The award for actual damages in favor of the heirs of Romeo Aganon, in the amount of P7,617.50 is reduced to P7,217.50; and in favor of the heirs of Pfc. Arnulfo Valera, in the amount of P24,000.00 is reduced to P13,500.00; for such were the amounts duly proved and supported by receipts

presented in the course of the trial.[78] With regard to the other funeral and burial expenses allegedly incurred by the heirs of the victims, the prosecution merely presented a list of the said expenses without producing any receipt or other evidence to support such claim. Be that as it may, accused-appellants should pay the heirs of the victims temperate damages in the amount of P10,000.00. Under Article 2224 of the Civil Code, temperate damages "may be recovered when the court finds that some pecuniary loss has been suffered but its amount cannot, from the nature of the case, be proved with certainty." [79] As to exemplary damages, the same may be granted in criminal cases as part of the civil liability if the crime was committed with one or more aggravating circumstances.[80] As found by the trial court, the commission of the robbery with homicide was attended by the aggravating circumstance of band, having been perpetrated by more than three (3) armed malefactors who acted together in the commission thereof.[81] Thus, an award of P20,000.00 as exemplary damages in favor of the heirs of the victims is in order.

WHEREFORE, the assailed decision of Regional Trial Court of Batac, Ilocos Norte, Branch 18, in Criminal Case No. 2547-18 convicting accused-appellants Vidal Valdez and Sales Sabadao of the crime of robbery with homicide and sentencing each of them to suffer the penalty of reclusion perpetua is hereby **AFFIRMED**, subject to the modification that the said accused-appellants are hereby **ORDERED** to pay, jointly and severally: (1) the heirs of Romeo Aganon, the sums of P50,000.00 as indemnity; P7,217.50 as actual damages; P50,000.00 as moral damages; P10,000.00 as temperate damages; and P20,000.00 as exemplary damages. (2) the heirs of Pfc. Arnulfo Valera, the sums of P50,000.00 as indemnity; P13,500.00 as actual damages; P50,000.00 as moral damages; P10,000.00 as temperate damages; and P20,000.00 as exemplary damages.

The Decision in Criminal Case Nos. 2548-18 and 2549-18 for illegal possession of firearm and ammunition, as penalized in Presidential Decree. No. 1866, as amended, is **SET ASIDE**, and accused-appellants are **ACQUITTED** thereof.

SO ORDERED.

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

[1] Rollo, pp. 51-100.

[2] Presided by Judge Alejandrino C. Cabebe.

[3] Also referred to as Charlo Mayo, Charlo Morales and Charlo Bayed.

[4] Rollo, pp. 27-28.

[5] Ibid. at p. 30.

[6] Ibid. at p. 32.

[7] Records, p. 76.

[8] Ibid. at pp. 182-186.

[9] TSN, October 6, 1987, pp. 4-5.

[10] TSN, October 6, 1987, p. 6.

[11] TSN, October 6, 1987, pp. 6-7.

[12] TSN, October 6, 1987, p. 7.

- [13] TSN, October 6, 1987, p. 16.
- [14] TSN, October 6, 1987, p. 16.
- [15] TSN, October 6, 1987, p. 21.
- [16] Exhibit C, Records, p. 22.
- [17] TSN, October 7, 1987, p. 7.
- [18] TSN, October 7, 1987, p. 8.
- [19] TSN, October 7, 1987, p. 12.
- [20] TSN, October 7, 1987, p. 13.
- [21] TSN, October 7, 1987, p. 19.
- [22] TSN, November 11, 1987, p. 2.
- [23] TSN, November 11, 1987, p. 3.
- [24] TSN, November 11, 1987, p. 4.
- [25] TSN, November 11, 1987, p. 6.
- [26] TSN, April 12, 1988, p. 3.
- [27] Exhibit J, Records, p. 163.
- [28] Records, p. 163.
- [29] Ibid. at p. 343.
- [30] TSN, April 13, 1988, p. 12.
- [31] TSN, April 13, 1988, p. 13.
- [32] TSN, April 13, 1988, p. 14.
- [33] Ibid.
- [34] TSN, April 13, 1988, p. 15.
- [35] TSN, April 13, 1988, p. 16.
- [36] TSN, April 26, 1988, p. 2.
- [37] TSN, September 27, 1988, p. 3.
- [38] TSN, September 27, 1988, p. 4.
- [39] Ibid.
- [40] TSN, September 27, 1988, p. 10.
- [41] Records, pp. 182-186.
- [42] TSN, November 13, 1990, pp. 2-8.
- [43] TSN, November 13, 1990, p. 3.

- [44] TSN, November 13, 1990, p. 9.
- [45] TSN, January 22, 1991, pp. 2-3.
- [46] TSN, January 22, 1991, pp. 4-5.
- [47] TSN, January 22, 1991, p. 7.
- [48] TSN, January 22, 1991, p. 10.
- [49] TSN, January 22, 1991, p. 12.
- [50] TSN, January 22, 1991, pp. 13-14.
- [51] TSN, May 15, 1991, p. 4.
- [52] TSN, October 11, 1993, pp. 4-5.
- [53] TSN, October 11, 1993, p. 11.
- [54] TSN, October 11, 1993, p. 12.
- [55] TSN, October 11, 1993, pp. 13-14.
- [56] Rollo, pp. 51-100.
- [57] Ibid. at pp. 99-100.
- [58] Ibid. at pp. 90-91.
- [59] Ibid. at p. 91.
- [60] Ibid. at pp. 94-95.
- [61] Ibid. at p. 95.
- [62] Ibid. at pp. 117-118.
- [63] *People vs. Lazaro*, G.R. No. 112090, October 26, 1999.
- [64] Section 1, Republic Act No. 8294.
- [65] *People vs. Navales*, 266 SCRA 569, 594 (1997).
- [66] *People vs. Olivarez, Jr.*, 299 SCRA 635, 645 (1998).
- [67] Rollo, p. 97.
- [68] Ibid. at p. 133.
- [69] *People vs. Nang*, 289 SCRA 16, 33-34 (1998).
- [70] *People vs. Avillano*, 269 SCRA 553, 563 (1997).
- [71] Rollo, pp. 91-92.
- [72] Ibid. at p. 134.
- [73] Ibid.
- [74] *People vs. Villamor*, 292 SCRA 384, 394 (1998).

[75] Rollo, at p. 136.

[76] *People vs. Rivera*, 295 SCRA 99, 109 (1998).

[77] *People vs. Tanilon*, 293 SCRA 220, 229 (1998).

[78] Exhibit Q, Records, p. 364; and Exhibits T and U, Records, pp. 367-368. Exhibits W and X, Records, pp. 370-371.

[79] *People vs. Oliano*, 287 SCRA 158, 179 (1998).

[80] Article 2230, Civil Code.

[81] Rollo, pp. 93-94.

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