

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JOEY AQUINO Y ACEDO, EDUARDO NEJAL Y FRONDES AND JOSE TRINIDAD Y PROGRESO, ACCUSED, JOEY AQUINO Y ACEDO, AND JOSE TRINIDAD Y P...

G.R. No. 129288. March 30, 2000

Ponente: DAVIDE JR., C.J.

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DAVIDE JR., C.J.:

Accused Joey Aquino y Acedo (hereafter AQUINO), Eduardo Nejal y Frondes (hereafter NEJAL) and Jose Trinidad y Progreso (hereafter TRINIDAD) were charged with the special complex crime of robbery with homicide in Criminal Case No. 1817-BG of the Regional Trial Court, Branch 67, Bauang, La Union, under an Information, the accusatory portion of which reads:

The undersigned Assistant Provincial Prosecutor accuses JOEL AQUINO Y ACEDO, EDUARDO NEJAL Y FRONDES and JOSE TRINIDAD y PROGRESO, of the crime of ROBBERY WITH HOMICIDE, committed as follows:

That on or about the 13th day of November, 1994 at Barangay Paringao, Municipality of Bauang, Province of La Union, Philippines and within the jurisdiction of this Honorable court, the above-named accused conspiring, and confederating and aiding one another, with intent of gain, did then and there willfully, unlawfully and feloniously, with the use of force, violence, intimidation against one, GREGORY BITMEAD, take, steal and carry away jewelries and cash amounting to TWENTY THOUSAND (P20,000.00) PESOS, Philippine Currency, without the consent and against the latter's will, and did then and there willfully, unlawfully and feloniously attack, assault and shoot with the use of a rifle said victim, thereby inflicting upon him multiple gunshot wounds which caused his death to the damage and prejudice of the heirs of the victim.[1]

The information was subsequently amended by changing the date of the commission of the offense from 18 November 1994 as originally alleged to 13 November 1994 to conform to the stipulation during the pre-trial. Upon re-arraignment on 27 April 1995, each of the accused pleaded not guilty to the offense charged.

Thus, the prosecution presented evidence tending to establish the following narration of facts.

On 13 November 1994 at 9 p.m., Slaton, Marilou Ortega, Janet Ysip and Asuncion Ulanimo (hereafter Stefen, Marilou, Janet and Asuncion, respectively) arrived at the Sportsman Retreat Club and Restaurant in Bauang, La Union. The restaurant, operated by Gregory Bitmead, an Australian national and fiancée of Stefen, had 7 tables, a bar and 2 billiard tables located at the far end.[2]

At around 9:15 p.m. on 13 November 1994, while Stefen's group was eating pancit, a car stopped in front of the restaurant. Accused AQUINO, followed by TRINIDAD and NEJAL, entered announcing, "dapa kayong lahat, hold-up ito (get down, this is a hold-up.)" Scared, most of the "customers dropped to the floor." Stefen thought that AQUINO was merely jesting so she stood her ground. Marilou "just stooped," while Janet froze in shock.

Gregory Bitmead, then drinking near the bar when all the accused arrived, got mad and shouted at them: "you can't do this to my fucking restaurant." [3]

AQUINO brought out his armalite and aimed it at Bitmead. NEJAL and TRINIDAD stood behind AQUINO holding short handguns and surveying the customers inside the restaurant. [4] Stefen hid her money, then ran towards Bitmead. She embraced Bitmead and begged all the accused not to kill him, "huwag, maawa po kayo (don't, have mercy)." [5] AQUINO, who was standing two meters from Bitmead and still aiming his gun at the latter, said nothing. Bitmead challenged AQUINO, "c'mon just hit me, just hit me." [6] While Stefen was still embracing Bitmead, Marilou heard a click from a short firearm, and saw someone go out. [7] Stefen, perceiving an imminent shoot-out, lowered her hand and released Bitmead. Two to three minutes later, shots rang out. Bits of flesh flew out of Bitmead's body and he was thrown to the side. He fell on the floor, unable to move. [8]

AQUINO then divested Stefen of three rings and one bracelet, and took Bitmead's belt bag which contained P20,000. TRINIDAD and NEJAL also went around the restaurant and took things from the customers. [9]

The incident lasted for ten minutes. All the accused went out of the restaurant with their loot and fled on board a maroon car with plate number ACL 843. There was another person left inside the car but nobody saw his face. [10]

Meanwhile, Bitmead who laid motionless on the floor, sustained a wound in the middle of his chest. One of his arms was almost torn loose from his torso. He was brought to the Provincial Hospital of La Union where he was pronounced dead on arrival. [11]

Dr. Bernardo Parado, Chief Municipal Health Officer of the Bauang Rural Health Unit, conducted the autopsy on Bitmead's body at the Joces Funeral Homes, Quinavite, Bauang, La Union.

Stefen, Marilou and Janet executed their separate sworn statements [12] wherein they narrated the tragic events at Bitmead's Restaurant before the police at Bauang, La Union. Stefen and Marilou were also made to describe the assailants to the cartographers of the National Bureau of Investigation. [13]

On 17 November 1994, Stefen and Marilou identified all the accused at a police line-up conducted at Camp Diego Silang, Bauang, La Union. Janet also identified AQUINO but was so nervous that she was unable to identify TRINIDAD. Stefen, Marilou and Janet confirmed their identification of the accused when called at the witness stand. Janet explained her failure to identify TRINIDAD at the police line-up because of his shaven moustache. All these girls only found out the real names of all the accused at Camp Diego Silang. [14]

Dr. Parado was called to testify to confirm his autopsy findings which indicated that Bitmead's

1.....liver is lacerated, [with] multiple massive hemorrhage noted at the abdominal area, fragmented slug recovered at the abdominal area (R)

2.....(Rt.) lung, lower lobe is lacerated with massive hemorrhage noted at the thoracic area (Rt)

3.....10th rib (Rt) is fractured, complete close with one slug recovered at the (Lt) left abdominal wall, massive hemorrhage noted. [15]

Dr. Parado then concluded that Bitmead died of "Cardio Respiratory Arrest secondary to Hemorrhagic shock secondary to Multiple Gunshot Wounds." [16] Dr. Parado also opined that the victim was facing the assailant and was very near the latter when he was shot; the assailant may have fired his gun thrice; and Bitmead was first hit on the right nipple, then he turned to the right and was hit on the forearm, then turned his back and was hit again. Two slugs met at the back and lacerated the liver, with the lacerated liver causing Bitmead's death. [17]

Bitmead's father, Reginald Bitmead testified that he spent P30,000 for Gregory's burial on 25 November 1995 at the Lingsat Cemetery, but he presented no receipt for the expenditure. As to the compensation for his son's death, Reginald declared "I don't want any money, sir. Dumb shit them." [18] Bitmead who was 41 years old at the time of his death, was a retired army man in Australia, and was receiving a monthly pension of P19,000. [19]

The prosecution rested its case on 17 October 1995 and was granted ten days to make a Formal Offer of Exhibits, which it did on 21 November 1995. [20] The defense then filed its opposition to or comments on the exhibits offered. In its Order of 17 January 1996, the trial court admitted the exhibits.

In its order of 6 March 1996, the trial court granted the motion of AQUINO and TRINIDAD for the reconsideration [21] of the admission of Exhibits "B" (photograph), "D" (cartographic sketch) and "G" (photograph) on the ground that they are hearsay evidence.

For his part, NEJAL filed a Demurrer to Evidence with Motion (to Exclude Exhibits "B," "C," and "E"). [22] AQUINO and TRINIDAD filed a motion for Acquittal on Demurrer to Evidence, [23] alleging that the out-of-court declarations and the testimonies of Stefen, Marilou and Janet were "rehearsed," and were contradicted by the autopsy findings of Dr. Parado; conspiracy was not proved; and the warrantless arrest was illegal. The motions were denied on 15 July 1996. [24]

In its Order of 15 July 1996, the trial court denied the Demurrer pleas. Sdaamiso

The defense thereafter presented its lone witness SPO1 Marcelino Gamboa who testified that Captain Tommy Cabigas, his immediate superior at the Criminal Investigation Service [CIS], Dagupan City, relayed to the Provincial Command the information that an Australian national was killed on 13 November 1994. By the early morning of the next day, the police were briefed and the identities of the alleged suspects, including their appearances, were supplied. SPO1 Gamboa learned from assets that AQUINO and TRINIDAD were the ones who staged the robbery/hold-up in Bauang, La Union. He claimed to know all the accused as there was an alarm raised against them for their involvement in a carjacking and hold-up robbery at Alice Restaurant, Sto. Tomas, Pangasinan. [25]

SPO1 Gamboa further claimed that at 9:30 p.m. on 15 November 1994, AQUINO and TRINIDAD were arrested while walking along Arellano St., Dagupan City. NEJAL was arrested at dawn two days later at his house in Sta. Barbara, Pangasinan. In both instances, Gamboa admitted that arrests warrants were not served, all the accused were not committing any crime, and they were not informed of their constitutional rights. Further, the arresting officers have no personal knowledge of the killing of Bitmead. All the accused were brought to the CIS office in Dagupan City where they were investigated. [26]

On 18 March 1997, the trial court promulgated its decision, [27] the decretal portion of which reads:

(a)

finding the accused, Joey Aquino y Acedo and Jose Trinidad y Progreso, GUILTY of the crime of ROBBERY WITH HOMICIDE beyond reasonable doubt and hereby sentencing them to the supreme penalty of DEATH;

(b)

acquitting Eduardo Nejal y Frondes of the crime charged for failure of the prosecution to prove his guilt beyond reasonable doubt, and shall forthwith be released from confinement unless he is being held for any other lawful cause; and

(c)

Ordering Joey Aquino y Acedo and Jose Trinidad y Progreso to indemnify the heirs of Gregory Bitmead in the sum of P200,000.00 without subsidiary imprisonment in case of insolvency.[28]

The trial court considered the testimonies of Stefen, Marilou and Janet "cogent, straightforward and convincing." It ascertained that their narrations of events on the complicity of AQUINO and TRINIDAD as attacker and robbers were candid and constituted the true version of the events.[29] However, it noted "with much concern" the failure of law officers to respect the rights of all the accused against unlawful arrests and during custodial investigation. Thus, the trial court ruled that the arrests were illegal. The trial court nonetheless concluded that it was unnecessary to apply the doctrine on the inadmissibility of evidence taken as a consequence of illegal arrests, since the positive identification of the accused by the prosecution witnesses was the basis for their conviction.

The decision was elevated to us for automatic review pursuant to Section 47 of the Revised Penal Code as amended by R.A. No. 7659.

In compliance with our resolution, the Director of the Bureau of Corrections confirmed the detention of AQUINO at the National Penitentiary.[30] The Director of Prisons confirmed that AQUINO was received at the New Bilibid Prisons on 15 April 1997, while TRINIDAD had no record of confinement since he escaped therefrom on 9 April 1997 after the promulgation of the trial court's decision.

Although TRINIDAD had escaped from detention and is now a fugitive, the automatic review in death penalty cases compels us to review the case as against him pursuant to our ruling in *People v. Esparas*. [31]

In this Court, AQUINO sought the substitution of his counsel de parte with the Free Legal Assistance Group [FLAG]. As required, the FLAG filed the Appellant's Brief wherein AQUINO attributes to the trial court the commission of the following errors:

I

FINDING THAT APPELLANT WAS IDENTIFIED BEYOND REASONABLE DOUBT BY THE PROSECUTION WITNESSES AS THE ASSAILANT OF THE VICTIM, GREGORY BITMEAD, AND ONE OF THE PERPETRATORS OF THE ROBBERY.

II

FINDING THAT THE CRIME COMMITTED WAS ROBBERY WITH HOMICIDE, INSTEAD OF HOMICIDE ONLY.

III

IMPOSING UPON APPELLANT THE SUPREME PENALTY OF DEATH, INSTEAD OF THE LESSER PENALTY OF RECLUSION PERPETUA.

IV

AWARDING DAMAGES DESPITE LACK OF EVIDENCE TO SUPPORT IT AND THE REJECTION BY THE FATHER OF THE VICTIM.

Anent the first assignment of error, AQUINO points out that the initial description by Stefen of Bitmead's assailant as 5'3" tall, with fair complexion, medium build and sporting long and slightly wavy hair conflicted with AQUINO's actual physical features. Marilou, who gave a detailed description of one of AQUINO's companions, vaguely remembered AQUINO's appearance. As for Janet, she could only identify AQUINO in court. Also, it was highly impossible for her to remember the face of AQUINO when she had seen him for only a few seconds due to the confusion and tension inside the restaurant and her obvious nervousness when the robbery took place.

AQUINO claims that the manner of identification was less than objective and fair. First, there were two police line-ups and Marilou was made to identify all the accused twice. Second, the three persons included in the second police line-up were so dissimilar in appearance to all the accused, contrary to what was enunciated in *People v. Acosta*,^[32] in that a police line-up should be confined to persons of the same height and built as the accused. Third, the witnesses for the prosecution were informed by the police that all the accused were in Camp Diego Silang prior to the identification, thereby psychologically conditioning the witnesses to find said accused in the police line-up.

AQUINO also maintains that the prosecution failed to establish the robbery as the evidence thereon was limited to the statements of Stefen and Marilou on the taking of Bitmead's beltbag. No proof was presented that Stefen had personal knowledge of the P20,000 allegedly contained in Bitmead's beltbag; and Janet testified that the assailants immediately fled after Bitmead was shot without mentioning the robbery.

AQUINO further argues that the absence of modifying circumstances negates the imposition of the death penalty pursuant to Article 63(1) of the Revised Penal Code; and there is, as well, no factual basis for the award of damages.

Finally, AQUINO prays for the remand of the case to the lower court because he was denied of his right to the assistance of counsel due to the gross incompetence of his previous counsel who was less than zealous in defending his interest. His counsel confined his defense to the illegal arrest subsequent to arraignment and disregarded his plea to present other witnesses.

In the Appellee's Brief, the Office of the Solicitor General (OSG) recommends that the penalty be lowered to reclusion perpetua due to the absence of aggravating and mitigating circumstances, and that the indemnity be fixed at P50,000 in accordance with established jurisprudence instead of P200,000. There was also no evidence in support of said amount. *Suprema*

As to the first assignment of error, the OSG countered that the witnesses for the prosecution had the opportunity to scrutinize the faces of AQUINO and his companions because the interior of the restaurant was brightly lit when the crime was committed. Further, the witnesses remained seated at their table and they did not get down to the floor despite being ordered to do so. Stefen, in particular, had a close look of AQUINO who stood two to three meters from her when she embraced Bitmead; she had also seen him prior to the incident. Marilou noticed the face of AQUINO from the time he and his companions entered the restaurant, announced the hold-up and approached Bitmead. Janet clearly observed the faces of all the accused.

The OSG further rationalizes that Stefen could not be expected to give an accurate measurement of AQUINO's height. She is a tall caucasian whose perception may be different from the other witnesses. It is also possible that AQUINO had a haircut prior to the police line-up.

The OSG also asserts that contrary to the claim of AQUINO that the police line-up was unfair and had to be repeated for Marilou's benefit, there was only one police line-up conducted inside Col. Lomibao's office. When Marilou saw AQUINO and his companions outside the office of Col. Lomibao, there was as yet no line-up being conducted; besides, a police line-up is not necessary for the identification of offenders.

The OSG likewise claims that the robbery was sufficiently proven. A determination of the exact amount asported is immaterial since it is not one of the elements of the crime of robbery. Janet's failure to see the robbery could be attributed to her nervousness.

The OSG opposes AQUINO's prayer for the remand of his case to the trial court. It maintains that AQUINO was not denied of his constitutional right to counsel, which, in any event, he should have invoked during trial. This

notwithstanding, the conviction of AQUINO could not be attributed to the ineffectiveness of his counsel or weakness in his defense but on the strength of the evidence for the prosecution.

After poring through the records and the transcripts of the stenographic notes of the witnesses presented by both parties, we are convinced that the prosecution was able to establish beyond reasonable doubt the guilt of AQUINO and TRINIDAD.

Anent the first assignment of error, when an accused challenges his identification by witnesses, he, in effect, attacks their credibility.[33] It is settled that when the issue of credibility of witnesses is involved, appellate courts will generally not disturb the findings of the trial court considering that the latter is in a better position to decide the question, having heard the witnesses themselves and observed their deportment and manner of testifying during trial, unless certain facts of value have been plainly overlooked, which if considered, might affect the result of the case.[34]

We cannot find any reason to overturn the trial court's favorable assessment of the credibility of the witnesses for the prosecution. The eyewitnesses were straightforward, consistent and objective in the narration of the events they witnessed. The restaurant was "fairly bright" and when conditions of visibility are favorable and the witnesses do not appear to be biased, their assertions as to the identity of the malefactor should be accepted as trustworthy.[35]

Stefen testified that she clearly saw AQUINO, thus:

Q How long were you looking at the face of Joey Aquino?

A Long enough to recognize his face.[36]

Any conflict between Stefen's initial description of AQUINO in her sworn statement and AQUINO's actual physical characteristics is inconsequential as Stefen cannot be expected to accurately estimate AQUINO's height. Witnesses frequently concentrate on the facial features and movements of the accused. Victims of violence tend to strive to see the appearance of the perpetrators of crime and observe the manner in which the crime is being committed[37] and not unduly concentrate on extraneous factors and physical attributes unless they are striking. Furthermore, we have long since recognized that a sworn statement or affidavit when taken ex-parte is generally considered inferior to in-court testimony. An affidavit is almost always incomplete and often inaccurate, sometimes from partial suggestion or for want of suggestions and inquiries. Its infirmity as a species of evidence is a matter of judicial experience.[38] Affidavits are oftentimes executed when an affiant's mental faculties are not in such a state as to afford him a fair opportunity of narrating in full the incident that has transpired.[39] What is important is that Stefen positively identified AQUINO in open court. This recognition is bolstered by Stefen's testimony that she had also previously seen AQUINO and TRINIDAD eating at the same restaurant prior to the incident[40] but she only found out their names during the police line-up. Scjuris

Marilou's identification of AQUINO and TRINIDAD is unassailable. She did not heed the order to take the floor. She merely stooped, thus witnessing the tragic events. She saw Stefen pleading for Bitmead's safety and TRINIDAD pointing his gun at Bitmead. Then she heard a click followed by two shots. When the smoke cleared, she saw AQUINO's gun stilled leveled at Bitmead.[41] She also saw AQUINO at close range, thus:

Q

After Joey Aquino has taken the belt bag of Gregory Bitmead and Jose Trinidad was getting something from the customers, what transpired after that?

A

Joey came near our table, sir.

Q

What did he do then?

A

He saw me stooping, he saw me looking at him and then he shouted at me saying "dapa."

Q

And after that what happened?

A

I got down from my chair and I hid under the table.[42]

As to NEJAL, Marilou admitted not to have immediately noticed him during the incident but she recognized him afterwards during the police line-up. She clarified:

Q

And why is it that you were only able to identify two (2) when you say that you saw three (3) persons?

A

I could only recognize two (2) because when I heard the shots, I tried to look at him that's why I remember the two (2) active.

Court:

Q

You mean to say the other one is not active?

A

He was just standing there sir, because I was stooping when I heard a shot, my attention was focused to Trinidad and then I got down, the other one who was pointing the gun to the victim.[43]

There is no standard rule by which witnesses to a crime may react. Often, the face and body movements of the assailant create an impression which cannot be easily erased from the memory of witnesses,[44] which was obviously the case with Marilou, upon whose mind the physical features of AQUINO and TRINIDAD were imprinted. Jurisc

Janet remembered AQUINO under similar circumstances. On that fateful night, Janet saw AQUINO brandishing a long gun. AQUINO's allegation that Janet's identification of him in open court was highly suspect as she admitted to being nervous and panicky during the incident. But her momentary glance at AQUINO left an indelible mark on her mind. True, the workings of a human mind placed under emotional stress are unpredictable and people react differently; some may shout, some may faint, and some may be shocked into insensibility.[45] But despite her fears Janet saw the unusual acts of bestiality committed before her. As an eyewitness and a victim she remembered with a high degree of reliability the identity of criminals.[46] During the police line-up, she remembered AQUINO's face and accordingly pointed him out as the gunman, thus:

Q

.When you identified Joey Aquino, you were not confused and you were not nervous?

A

Because it was really he whom I cannot forget his face because he was the one holding the gun.[47]

It is also clear to us that Stefen, Marlon and Janet have no motive to falsely impute the wrongdoing upon AQUINO and TRINIDAD; on the contrary, being victims of the robbery, (with Stefen as Bitmead's fiancée) they were expected to seek justice. It would be contradictory to human experience if they attributed authorship of the dastardly acts to persons who did not commit them. It is settled that if the accused had nothing to do with the crime, it would be against the natural order of events to falsely impute charges of wrongdoing upon him.[48] There is no indication in this case that either Stefen, Marilou or Janet was actuated by improper motive in implicating AQUINO and TRINIDAD. Their testimonies then, being credible, are entitled to full faith and credit.

On the claim that the conduct of the police line-up was not objective and fair, suffice it is to state that there is no rule requiring that before a subject can be identified as the culprit he should be first placed in a police line-up and pinpointed by witnesses.[49] A police line-up is not indispensable for the proper and fair identification of offenders.[50] The important consideration is for the victim to positively declare that the persons charged were the malefactors. Such goes into the credibility of the witnesses as tested during the trial.[51] Misjuris

It is not true that two police line-ups were formed. What AQUINO alleged to be the "first" line-up formed outside the office of Col. Lomibao was not a line-up. The accused and other persons were only milling about the building waiting for the real police line-up inside Col. Lomibao's office during which time Marilou was able to identify AQUINO and TRINIDAD.

It is also untrue that the prosecution witnesses were psychologically conditioned to find all the accused in the police line-up. Previously, Stefen and Marilou had already described the physical features of AQUINO to the NBI cartographer; and when all the accused were presented to them during the police line-up, they just confirmed their earlier impressions of the malefactors. AQUINO cannot invoke *People v. Acosta*.^[52] In that case, Acosta was alone in the detention cell when he was identified; Acosta's picture was not mixed with others when the witnesses were asked to identify him; and the shirt he wore during the police line-up was the same one he had on in the picture. The situations which we have therein considered suggestive were: where the accused was the only Oriental in a line-up composed entirely of blacks, the sole black-haired person among light-haired individuals, the only tall person among short individuals, the lone youth among suspects over 40 years old, and the only person who wore distinctive clothing. None of these suggestive conditions was present during the positive identification of AQUINO and TRINIDAD at the police line-up.

As for conviction for the special complex crime of robbery with homicide under Article 294 of the Revised penal Code, the robbery itself must be proved as conclusively as any other element of the crime.^[53] Taking with intent to gain of personal property belonging to another by means of violence against or intimidation of any person or force upon things constitutes robbery.^[54]

On this score, the prosecution was able to discharge its burden of proof. Both Stefen and Marilou saw AQUINO divest Bitmead of his belt bag containing P20,000. Stefen was certain of the amount as she did the bookkeeping on that day for Bitmead. Stefen herself was robbed of three rings and one bracelet. She categorically declared:

q: And after he fell down what did joey [sic] Aquino do?

a He took my jewelries and went to the counter.

q What jewelry?

a Three (3) rings and one bracelet.

xxx

q- After Joey Aquino divested your three (3) rings and went to the counter, what did Eduardo Nejal do? After taking the belly bag of Gregory Bitmead?

a- He was also collecting.

q- What was he collecting?

a- I don't know if they are jewelries or money.

q- From where does Eduardo Nejal collecting?

a- In the middle of the table and at the bar outside.[55]

Marilou also saw AQUINO take not only Bitmead's bag but the personal property of the other customers:

Q-

And what happened after hearing those two (2) shots?

A-

I was stooping, I saw Joey got the bag of Gregory Bitmead and Jose Trinidad went to the counter.

Q-

What was that bag of Gregory that was taken by Joey?

A-

Belt bag.

Q-

You want to tell us that Joey Aquino took that belt bag of Gregory Bitmead which he was wearing at the time?

A-

Yes, sir.

x x x

Q-

You also said that Jose Trinidad went to the counter?

A-

Yes, sir.

Q-

Do you know what he do to the counter?

A-

I saw him taking things from the customers, sir. He was trying to take something, they were handling him over.[56]

AQUINO thus missed the point in claiming that Stefen's testimony on the amount contained in the belt bag was uncorroborated. There is no need to prove the exact amount taken. What is material is that there be proof of the unlawful taking as in this case. Regardless of the actual amount inside the belt bag, the crime committed is still robbery with homicide. The elements of the crime were proved beyond reasonable doubt. In any event, in robbery with homicide, the important consideration is that there be a nexus between the robbery and the killing whether prior, subsequent to or committed at the same time.[57]

Nonetheless, we find meritorious the third assignment of error. No mitigating or aggravating circumstance was proved during trial. Article 63 of the Revised Penal Code provides that, when the law prescribes a penalty composed of two indivisible penalties, such as reclusion perpetua to death for the complex crime of robbery with homicide, and neither mitigating nor aggravating circumstance attended the commission of the deed, the lesser penalty shall be applied. The impossible penalty then in this case is reclusion perpetua.

As to AQUINO's invocation of his constitutional right to assistance of counsel, we find it undeserving of credit. AQUINO was assisted by a counsel and if he had difficulties with this counsel, he should have informed the trial court of this fact. He had the opportunity to do so, yet he chose to keep quiet. He could have insisted on presenting his own version of the events but he did nothing, thereby clearly indicating his full agreement with his counsel's chosen strategy. Besides, his conviction was not based on the weakness of the evidence for the defense but on the strength of the prosecution's case.

We agree with AQUINO however, that there was no basis for the award of P200,000. Jurisprudence has fixed the indemnity for death at P50,000 without need of proof.

As a general proposition, whenever a homicide is committed by reason or on the occasion of a robbery, all those who took part therein are liable as principals of the crime of robbery with homicide, although some did not actually take part in the homicide.[58] Even though throughout the trial it was only AQUINO who was seen to have pulled the trigger against Bitmead, conspiracy was adequately established by the testimony of the prosecution witnesses. Hence, all the conspirators are liable as principals regardless of the extent of their respective individual participation, for in contemplation of law, the act of one is the act of all.[59]

WHEREFORE, the decision of the trial court finding accused JOEY AQUINO y ACEDO and his co-accused JOSE TRINIDAD y PROGRESO guilty beyond reasonable doubt as principals of the special complex crime of robbery with homicide defined and penalized in Article 294 of the Revised Penal Code, as amended by R.A. No. 7659, is AFFIRMED, subject to the modification that the penalty of death imposed by the trial court should be, as it hereby, reduced to reclusion perpetua, and that indemnity of P50,000 for the death of Gregory Bitmead be paid to his lawful heirs.

Costs de officio.

SO ORDERED.

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

[1] Rollo, 13-14.

[2] TSN, 27 April 1995, 6, 28-29; 20 June 1995, 5-6; 8 August 1995, 4-5.

[3] TSN, 27 April 1995, 7-9; 20 June 1995, 6-10; 8 August 1995, 7-9, 12.

[4] Id., 48-49; id., 11, 34.

[5] Id., 8, 11-12, 31, 36-37, 47; id., 12; 8 August 1995, 10, 12.

[6] Id., 12, 44-45; id., 34, 36.

[7] TSN, 20 June 1995, 14, 35.

[8] TSN, 27 April 1995, 12-14, 37-39; 8 August 1995, 13.

[9] Id., 14, 39-40, 46; 20 June 1995, 14-16, 44-45.

[10] Id., 14, 18; id., 16; 8 August 1995, 14.

[11] Id., 18-19; id., 14, 16.

[12] Original Record [OR], 4-13.

[13] TSN, 27 April 1995, 16-17, 21, 23-25, 32-35, 40; 20 June 1995, 18-20, 36-38; 8 August 1995, 16-17, 23.

[14] Id., 49-51; id., 21- 22, 36, 43; id., 17-20, 23-30.

[15] OR, 172.

[16] Exhibit "L-2."

[17] TSN, 26 July 1995, 23-25, 28.

[18] TSN, 12 September 1995, 8.

[19] Id., 5-7.

[20] OR, 232-235.

[21] Id., 269-271.

[22] Id., 295-299.

[23] Id., 313-320.

[24] OR, 325-328.

[25] TSN, 30 October 1996, 9-15, 24-27.

[26] Id., 8-9, 22-23, 31-32.

[27] Per Judge Jose G. Paneda. Rollo, 50-67.

[28] Rollo, 66-67.

[29] Id., 62.

[30] Id., 68.

[31] 260 SCRA 539 (1996)

[32] 187 SCRA 39 (1990)

[33] See *People v. Martinez*, 274 SCRA 259, 268 (1997) citing *People v. Apawan*, 235 SCRA 355 (1994)

[34] *People v. Lagario*, 224 SCRA 351, 358 (1993) citing *People v. Simon*, 209 SCRA 148 (1992) and *People v. Lee*, 204 SCRA 900 (1991); *People v. Caña Leonor*, 25 March 1999, G.R. No. 125053, 9.

[35] *People v. Martinez*, supra note 33, at 270.

[36] TSN, 27 April 1995, 49.

[37] *People v. Pulusan*, 290 SCRA 353, 372 (1998) citing *People v. Apawan*, supra note 33 and *People v. Dolor*, 231 SCRA 414. See *People v. Sumallo*, G.R. 116737, 24 May 1999.

[38] *People v. Conde*, 252 SCRA 681, 690 (1996); *People v. Bayani*, 262 SCRA 660, 680 (1996); *People v. Diaz*, 262 SCRA 723, 732 (1996)

[39] *People v. Nang*, 289 SCRA 16, 30 (1998) citing *People v. Dumpe*, 183 SCRA 547, 552 (1990)

[40] TSN, 27 April 1995, 15, 30-31.

[41] TSN, 20 June 1995, 14.

[42] TSN, 20 June 1995, 16.

[43] Id., 29-30.

[44] *People v. Gomez*, 251 SCRA 455, 469-470 (1995)

[45] *People v. Malunes*, 247 SCRA 317, 326 (1995)

[46] *People v. Gomez*, supra note 44, at 469. Citing *People v. Teehankee*, 249 SCRA 54, 98 (1995)

[47] TSN, 8 August 1995, 30.

[48] *People v. Padilla*, 242 SCRA 629 [1995]; *People v. De Leon*, 245 SCRA 538 (1995); *People v. Malunes*, 247 SCRA 317 (1995); *People v. Hubilla, Jr.*, 252 SCRA 471 (1996); *People v. Cristobal*, 252 SCRA 507 (1996); *People v. Laurente*, 255 SCRA 543 (1996); *People v. Excija*, 258 SCRA 424 (1996); *People v. Villegas*, 262 SCRA 314 (1996); *People v. Leoterio*, 264 SCRA 608 (1996)

[49] *People v. Apawan*, supra, note 33.

[50] *People v. Quinao*, 269 SCRA 495 (1997) citing *People v. Florendo*, 230 SCRA 599 (1994)

[51] *People v. Apawan*, supra note 33.

[52] Supra note 32.

[53] *People v. Martinado*, 214 SCRA 712 (1992). See *People v. Laurente*, 255 SCRA 543 (1996); *People v. Sequino*, 264 SCRA 79 (1996)

[54] *People v. Barlis*, 231 SCRA 426 (1994) citing *People v. Martinado*, *id.*, and *People v. Dela Cruz*, 217 SCRA 283 (1993); *People v. Leonor*, *supra* note 34.

[55] TSN, 27 April 1995, 13- 14.

[56] TSN, 20 June 1995 14-15.

[57] *People v. Faco*, G.R. No. 115215, 16 September 1999.

[58] *People v. Lascuna*, 225 SCRA 386 (1993), citing *People v. Solis*, 128 SCRA 217 (1984); *People v. Salvador*, 163 SCRA 574 (1988); *People v. Nunay*, 196 SCRA 206 (1991); *People v. Hasiron*, 214 SCRA 586 (1992)

[59] *People v. Martinado*, *supra*, note 53, 732-733.

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