

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RODEL DIZON Y ABILA, ACCUSED-APPELLANT.*G.R. No. 131506. September 06, 2000*

Ponente: BELLOSILLO, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-131506/>**BELLOSILLO, J.:**

RODEL DIZON Y ABILA was charged before the Regional Trial Court of Pasig City with robbery with homicide committed on 6 June 1996 against Juanito Baful, taxi driver of EMP Transport Services. The Information alleged that in conspiracy with a certain Raffy, Rodel unlawfully took from his victim a Seiko gold plated watch worth P3,500.00, a gold ring worth P5,000.00 and cash of P2,500.00, and on the occasion thereof stabbed the victim to death.[1]

On 5 November 1997 the trial court convicted Rodel of the crime charged and sentenced him to reclusion perpetua. It also ordered him to pay the heirs of the victim P50,000.00 as death indemnity, P11,000.00 representing the total value of the stolen personal belongings and cash, P100,000.00 for moral and exemplary damages, P120.00 as expenses for the wake; and, to EMP Transport Services, P13,000.00 as funeral expenses and P4,450.00 as expenses for the repair of the taxi, all without subsidiary imprisonment in case of insolvency, and the costs.[2]

On 6 June 1996, at around 1:30 in the morning, Ricardo Asuncion was sleeping in his house at Dingginbayan Street, Tupas, Taguig, Metro Manila. He was suddenly awakened by a loud noise coming from the street. When he peeped through the window of his bedroom, he saw an EMP Toyota Tamaraw FX taxi hit his concrete fence and its left rear tire plunge into the street canal. The headlights of the taxi were on. His fence, about 3-1/2 meters away from his house, was destroyed. To get a better view of what happened, he transferred to the living room beside his bedroom fronting the street. He then saw his neighbor Rodel Dizon approach the taxi from his own house. He was only wearing pants. Rodel tried to open the doors of the taxi and shouted to the driver, "Buksan mo, buksan mo!" Since the doors could not be opened, Rodel went back to his house, only to return carrying a stone about one (1) foot long and eight (8) inches thick, and smashed with it the windshield of the cab on the passenger side. Then he cleared the broken windshield with his left hand wrapped in a t-shirt. He unlocked the front passenger door and went inside. The driver Juanito Baful cried out, "Maawa kayo, maawa kayo! Marami akong anak, may sakit pa ang anak ko. Huwag po, huwag po!" A commotion ensued, as if "nagkakairihan sa loob." [3] Thereafter, Rodel alighted from the taxi with his left hand still wrapped in a t-shirt. He was not holding anything.

After Ricardo reported the incident to the Taguig Police Station, he went back to the crime scene accompanied by two (2) policemen. When they discovered that Juanito was already dead, they called for investigators. Three (3) policemen, one of whom was SPO1 Gracio Cangco, and a photographer arrived. They recovered Juanito's wallet from his pants which contained only his driver's license and identification card, as well as a t-shirt on the hood of the taxi. They also discovered a blood trail from the taxi leading to the house of Rodel about four (4) houses away. They failed to find Rodel but learned later that the t-shirt belonged to his daughter. SPO1 Cangco's

investigation led him to Peping's Restaurant in Pateros where he was informed that Rodel had a drinking session the night before. SPO1 Cangco also gathered that at about 1:00 o'clock in the morning of 6 June 1996 the security guard of the establishment hailed for Rodel and his companion Raffy a yellow taxi with white stripe and marked "EMP." On 10 June 1996 Rodel was arrested and a belt with an improvised bladed weapon as buckle was confiscated from him.

The postmortem examination conducted by Dr. Rosaline Cosidon, Medico-Legal Officer, revealed that Juanito Baful sustained twenty-seven (27) injuries, seventeen (17) of which were stab wounds that could have been caused by a bladed instrument.

Manolito Baful, son of the victim, testified that he last saw his father alive in Lerma, Quiapo, in the afternoon of 5 June 1996. His father at that time was wearing a ring, a necklace and a Seiko 5 automatic gold-plated wristwatch. He did not know however how much his father was earning as a driver. He spent about P120.00 for fare when he once went to his father's wake. He added that the pain he and his siblings endured as a consequence of their father's death was very hard to quantify.

Federico Estonido, President of EMP Taxi Drivers' Association, testified that the Association paid P13,000.00 for the victim's burial expenses aside from the P4,450.00 spent for the repair of the taxicab.

But Rodel Dizon completely denied the accusation. His version is that at around 11:00 o'clock in the evening of 5 June 1996 he was at Peping's Restaurant situated in the boundary of Pateros and Taguig with Raffy Manalastas and a certain "Ayi." They went on a drinking spree until 1:00 o'clock the following morning, 6 June 1996, although Rodel insisted that he did not drink more than he could take. He also claimed that he and Raffy left the restaurant in a taxi and reached his house at about 1:10 that same morning, while Raffy also proceeded home. According further to Rodel, his wife Olivia was still awake when he arrived. She was fetching water. He told her he had a drinking session with Raffy. Since Olivia did not want to sleep yet, he alone went to sleep. At about 1:45 in the morning, Olivia woke him up saying, "Dy, Dy, si Raffy." He got up and would have gone out wearing only his underwear had not his wife reminded him to wrap himself up with a towel. Raffy was already standing at the front door of their house and telling him to hurry. When he and his wife went out of the house they noticed that there were already plenty of people in the vicinity. Then he saw a Tamaraw FX taxi backing out. It was the same taxi that brought him home. Raffy again told him to hurry up, this time telling him that he had been held up. Upon hearing this, Rodel returned to his house, put on his pants and went out again. Then he saw that the taxi had ditched into the street canal and Raffy, with some four (4) to five (5) persons, was standing near the passenger side. Rodel went near the taxi and asked the driver to get out. But the driver refused, so he got a big stone and broke the windshield. The driver pleaded, "Maawa na kayo," and handed back to Raffy the latter's bracelet, wristwatch and RayBan sunglasses. Then the driver kicked the door of the taxi and a commotion ensued. Raffy together with Angel and "Boyong" went inside the taxi, while Rodel was pulled away by his wife and led to their house. He never had the chance to go near the taxi afterwards.

After a few minutes, Raffy followed them to their house where he recounted that he had fallen asleep in the taxi and was suddenly awakened when he felt something being taken from his back. To his dismay, he discovered that his watch, bracelet and RayBan sunglasses were all gone. The driver told him that his companion, referring to Rodel, had taken them. So, Raffy calmly ordered the driver to go back to the house of Rodel.

Olivia and Nonito Dugay, a neighbor, corroborated the version of Rodel, with Olivia adding that in the afternoon of 7 June 1996 Ricardo Asuncion demanded P10,000.00 from her for the damage caused to his fence otherwise he would testify against her husband.

On the strength of the categorical assertion of Ricardo that it was Rodel alone whom he saw approaching the taxi,

smashing its windshield, opening its door and then boarding it, and that afterwards he heard "parang nagkakairihan" inside, the trial court held the accused guilty for the death of Juanito Baful. Deducing that the victim had some earnings at least at the time he was robbed and killed, the trial court also found the accused guilty of robbery complexed with homicide.

Accused-appellant now assails his conviction by the trial court since Ricardo failed to witness the actual stabbing; neither did Ricardo see him holding anything after emerging from the taxi, such that he could not have taken the money and other personal belongings of the victim. Moreover, accused-appellant insists that there is no evidence whatsoever that the victim had money, and maintains that his only participation in the incident was smashing the windshield of the cab to give a chance to Raffy, Angel and "Boyong" to assault Juanito.

After a thorough examination of the facts, the Court is convinced that accused-appellant was responsible for the death of Juanito Baful and his guilt has been established beyond reasonable doubt. Appellate courts do not generally disturb the findings of the trial court which are given great weight and respect since it had the opportunity to observe the demeanor of the witness or witnesses during the trial.[4] There is no showing that the trial court overlooked, misunderstood or misapplied some facts or circumstances of weight and substance which could have affected the result of this case;[5] consequently, no reason exists to accord a contrary treatment to the testimony of Ricardo. Thus, according to the trial court, "a witness who testifies in a categorical, straightforward, spontaneous and frank manner and remains consistent is a credible witness. The t-shirt, the belt with the improvised bladed weapon as its buckle, the seventeen (17) uniform stab wounds from one and the same weapon, plus the trail of blood tell it all and leave no room for doubt whatsoever x x x that the accused was the perpetrator of the dastardly act of stabbing to death Juanito Baful y Albarrio." [6]

Ricardo Asuncion, who was awakened by a loud thud emanating from the street, saw Rodel Dizon approach the taxi and then summon the driver to alight therefrom. Ricardo was only four (4) to five (5) meters away from them and the headlights of the taxi were on. When the driver refused and since the doors of the cab were locked, accused-appellant broke the windshield with a stone. Then he boarded the taxi. Juanito pleaded, "Maawa kayo, maawa kayo! Marami akong anak, may sakit pa ang anak ko. Huwag po, huwag po!" A commotion ensued as if "nagkakairihan sa loob." Thereafter, accused-appellant got out from the vehicle, and then there was silence. Ricardo vividly narrated the incident thus -

Q:

Do you know a certain person by the name of Rodel Dizon?

A:

Yes, sir x x x x We are neighbors, sir x x x x As far as I know, they just transferred to our place sometime in February of 1996, sir.

Q:

You have met him since he transferred?

A:

Not necessarily, sir. But I usually see him there x x x x I just see him around "palakad-lakad" because we are

neighbors, sir.

Q:

On June 26, 1996, did you happen to meet this person Rodel Dizon?

A:

Actually we did not meet, but I saw him during the actual incident, sir x x x x At first I was awakened by a loud (thud) of a vehicle, sir. Our fence was destroyed.

Q:

Upon waking up, what did you do?

A:

I peeped through the window, sir.

Q:

Where is this window of your house in relation to the street, Dingginbayan?

A:

The distance from our house is approximately four to five meters, sir x x x x I saw the vehicle with its rear end in the canal because the vehicle fell off the canal with its headlights on. And our fence was destroyed, sir x x x x

Q:

By the way, what is that vehicle or "sasakyan?"

A:

Taxi, sir x x x x Toyota FX, EMP Taxi, sir.

Q:

Upon seeing that taxi in that situation you described, what did you do?

A:

I saw Rodel approaching, sir. I saw that because the lights were on x x x x

Q:

Will you kindly go down the witness stand, approach this person whom you mentioned as Rodel Dizon and point to him?

INTERPRETER:

Witness going down the witness stand and approaching a man inside the courtroom whom when asked identified himself as Rodel Dizon, the accused in this case x x x x

Q:

In relation to the front of the taxi? Where did he come from?

A:

From his house, sir.

Q:

And how were you able to see him, tell the Court?

A:

I saw him "na sumampa siya sa bakud namin." Then I saw him opening the window on the driver side, sir.

Q:

x x x what was the make of your "bakud" x x x x

A:

Made of hollow blocks, sir.

Q:

After that, what happened?

A:

He went to the passenger seat and was trying to open the taxi but he cannot (sic). He was shouting "buksan mo, buksan mo" x x x x when he cannot (sic) open it because he tried to open all the doors at the back seat but he cannot (sic) open them, then he took a distance

Q:

When he failed to open the taxicab, what happened?

A:

He went back to his house, sir x x x x When he went back, he was carrying a big stone, sir.

Q:

Will you kindly demonstrate to the Court what you call "malaking bato?"

PROSECUTOR:

Can we stipulate, Compañero, one foot?

ATTY. PONCE:

Yes, one foot.

Q:

How about the thickness?

PROSECUTOR:

Eight inches.

Q:

After that, what happened?

A:

And then he lifted the stone and threw it in front of the taxi. He threw it against the windshield of the vehicle on the passenger side, sir x x x x He opened that lock of the taxi. He opened the door then he entered the taxi, sir. At that point, the person inside the taxi was begging for mercy (nagmamakaawa) x x x x He said "Maawa

kayo, maawa kayo. Marami akong anak, may sakit pa ang anak ko. Huwag po, huwag po" x x x x He entered inside the taxi, sir x x x x Then there was a commotion inside as if "Nagkakairihan sa loob" x x x x Then he went out of the taxi, he closed the door. He went away from the scene and there was silence inside the taxi, sir.

Q:

Where did Rodel Dizon go?

A:

He went to his house, sir.

Q:

After that, what happened at the scene?

A:

There was silence, sir.

Q:

After it was "tahimik na," what did you do in your case?

A:

I waited (until?) everything was clear before I called the police, sir x x x x When I saw the commotion, it was 1:30, sir x x x x Early morning, sir x x x x June 6, your Honor x x x x

Q:

From the police Block at Barangay Ibayo, Tipas, Taguig, what else did you do, if any?

A:

I tried to contact the two policemen there. I talked to them. I boarded them to our vehicle and brought them in front of our house, sir x x x x

Q:

With those two policemen, with you at the scene of this incident, what happened?

A:

What they did, since they were calling a cellular, they called up the Taguig to get an investigator. They were just guarding the taxi. But they opened the taxi. But they opened the taxi to see if the person inside was still alive and when they saw that he's already dead, they did not move anyone, and they just called the Taguig x x x x

Q:

What happened after that?

A:

Not long (after?), the investigator came, sir x x x x

Q:

After their arrival, what happened at the scene?

A:

I saw when the investigator saw the drops of blood with the use of flashlight. I saw they were going to the house of Rodel. Since there was a fence, with the use of flashlight, they were trying to see the other side of the fence, sir x x x x[7]

Ricardo even emphasized during the cross examination that at the time of the incident, aside from the taxi driver and accused-appellant, there were no other persons at the crime scene -

Q:

And there were other people around?

A:

None, sir.

Q:

Are you sure of that?

A:

None, sir x x x x

Q:

Actually you did not notice what was transpiring at the back of the taxi or at the other side of the taxi?

A:

No, sir. Our place was clear at that time. There were no other people there. I could see if there's anyone there but I did not see anybody, sir. And beside, after that incident I focused my attention there and I did not see anyone "na umaalis o lumalakad doon" x x x x

Q:

So you are not really sure, Mr. Witness, whether it was the accused who was the only person there and it is possible that there were other people there?

A:

No, sir. I am sure about that. Because when the incident happened I guarded the place from the time of the incident until morning and there were no person around, sir x x x x[8]

Although Ricardo did not actually see what transpired inside the taxi after accused-appellant boarded it, we agree with the Office of the Solicitor General that the following circumstances sufficiently support the judgment of conviction: (a) victim and accused-appellant were the only persons at the locus criminis, i.e., inside the taxi; (b) after accused-appellant entered the taxi there was a commotion; (c) victim Juanito Baful pleaded, "Maawa kayo, maawa kayo! Marami akong anak, may sakit pa ang anak ko. Huwag po, huwag po;" (d) accused-appellant then alighted from the taxi; and (e) there was silence. Significantly, the investigators found a trail of blood leading from the taxi to the house of accused-appellant which he failed to explain. As SPO1 Cangco recounted -

Q:

After the picture taking or the taking of the photographs, what happened?

A:

After we finished taking photographs and asking people around the vicinity, it was already morning, sir. x x x x We saw some drops of blood, sir. x x x x From the taxi going to a house, sir.

Q:

Where is that house located in relation to the taxi?

A:

Going to the house of Rodel Dizon, also in Dinggin Bayan (Dingginbayan?) Street, sir.

Q:

How did you know that it was the house of Rodel Dizon?

A:

When we knocked on the door of the house, a woman opened the door, sir.

Q:

Were you able to determine who she was?

A:

Yes, sir. She was the wife of Rodel Dizon, sir x x x x[9]

The defense punctiliously attempted to puncture the testimony of SPO1 Cangco by its incisive cross examination, but it only virtually provided the witness the opportunity to stress the obvious -

Q:

When you arrived at the scene of the crime, there were blood spots scattered and that these blood spots could lead to any house there near the scene. Isn't it?

A:

The blood stains were going only to the house of Rodel and not to any other house, sir x x x x[10]

On redirect examination, SPO1 Cangco expounded and reiterated -

Q:

You referred to the blood spots, will you kindly describe the blood spots because according to the question of the defense it might have led to another house? Please describe the blood spots?

A:

The distance of the drops to another (sic) drops of blood was probably like this, sir.

PROSECUTOR:

We stipulate, Compañero, about a foot.

ATTY. PONCE:

Less than two feet.

Q:

Single spot?

A:

Two spots, sir.

Q:

More or less how many spots leading to the house of the accused?

A:

More or less fifteen to twenty, sir x x x x

Q:

In regard to these blood spots that you described, were there other blood spots?

A:

No more, sir. These are the only blood spots we saw.[11]

SPO1 Cangco further narrated that he and the other investigators inquired from several persons in the neighborhood regarding the incident but they could not provide any information as it happened very early in the morning.[12]

Circumstantial evidence is akin to a tapestry; it should be made up of strands which create a pattern when interwoven.[13] The foregoing strands of circumstantial evidence that the prosecution has woven have created a pattern pointing indubitably to the culpability of accused-appellant Rodel Dizon for the death of Juanito. There was a chain of circumstances; the facts from which the inferences were derived were proved; and, the combination of all the circumstances produced a conviction beyond reasonable doubt.[14]

As if gasping for life, Olivia claimed, rather belatedly, that Ricardo demanded P10,000.00 from her for the damage caused to his fence otherwise he would testify against her husband. Apparently, she wanted to prove that Ricardo was ill-motivated in imputing the crime to her husband. But we are not persuaded. It is almost incredible that Ricardo would demand payment from the wife of accused-appellant for the damage to his fence since he himself knew that the damage was brought about when the taxi crashed into his fence. In other words, Ricardo who witnessed the incident had already ascertained who should rightfully be liable for the damage, and they were the taxi driver and/or his operator. Moreover, Ricardo knew that accused-appellant was a mere “kristo sa sabungan”[15] or bet-taker in cockfights, such that to demand P10,000.00 from Olivia or the Dizon spouses would be an exercise in futility. Indeed, it was unlikely that Ricardo would make such a demand from Olivia. It must also be considered, as it was in fact conceded by accused-appellant, that there was no bad blood between him and Ricardo.[16] Thus we do not find any motive for Ricardo to falsely impute such a serious charge to

accused-appellant.[17]

Viewed from another perspective, Ricardo's testimony can hardly be disputed since as owner of the damaged fence it was natural for him to find out with accuracy the identity of the culprit responsible for destroying his property.

Denial is as weak as alibi;[18] in order to prosper it must be supported by convincing evidence.[19] Accused-appellant proffered that he merely helped Raffy recover from the taxi driver his sunglasses, bracelet and watch, and that the ones who mauled the victim were Raffy, Angel and "Boyong." But, his defense fails to pass the test of credibility. Consider these relevant portions of his testimony -

Q:

When Raffy called you, "Del, dalian mo," what did you do?

A:

I opened the small door of the gate and I peeped and when I peeped, the taxi suddenly "umarangkada," sir x x x x After it made "umarangkada" backward, Raffy suddenly ran after the taxi and then he called me, "Del, Del, dalian mo, hinold-up ako nito."

Q:

And so, what did you do?

A:

What I did was I went back inside the house, sir.

Q:

What did you do inside the house?

A:

I got a (sic) pants, sir x x x x

Q:

After getting the pants inside your house, what did you do?

A:

I went out of the house, we went to the taxi which fell down the canal, sir x x x x

Q:

When you ran towards the taxi, where was Raffy then?

A:

He was beside the taxi at the passenger side, sir.

Q:

Was Raffy alone at the side of the taxi?

A:

When I was approaching, Raffy was there together with other people around, sir. x x x x Around four to five persons, sir.

Q:

Do you know the names of the people aside from Raffy?

A:

I only remember Angel, sir x x x x

Q:

Who else?

A:

Boyong and someone whom they call as Batoy and the rest I do not know, sir.

Q:

When you reached the place where the taxi was, what did you do?

A:

When I approached, Raffy said and I was asking the driver to alight.

Q:

What did this taxi driver do?

A:

In my first word, he did not alight, sir x x x x I again told him and ordered him to go down, sir.

COURT:

At that time, was Raffy with you?

A:

Yes, sir, I was in front and Raffy was on the side together with the other persons x x x x

Q:

Did the taxi driver went (sic) out of the taxi?

A:

No, sir.

Q:

What did you do?

A:

Until I gave him an ultimatum to get down, I got a stone.

Q:

What did you do with the stone?

A:

I hit the windshield, sir x x x x After I hit it with a stone, the driver spoke, “maawa na kayo” and he returned the rayban, the bracelet and the watch, sir.

Q:

To whom was it returned?

A:

He handed it to Raffy.

Q:

As far as you know, who owns this rayban, bracelet and this watch?

A:

Raffy, sir.

Q:

How were you able to know that?

A:

At first, he mentioned these things and I see those things from him, sir x x x x

Q:

After the taxi driver handed to Raffy the bracelet, the watch and the rayban, what happened next?

A:

After he handed it, I just saw that the taxi driver kicked the door and then there was a commotion inside and my wife pulled me, sir.

Q:

Did you see the persons who went inside the taxi when you said there was a commotion inside?

A:

What I saw was that only Raffy, Angel and Boyong, sir.

Q:

After your wife pulled you while there was a commotion on-going inside the taxi, what happened next?

A:

None, sir, my wife just pulled me straight to our house, sir x x x x

Q:

When you went to the house from the place where the taxi was, did you have any occasion to go back at the place of the taxi at that morning of June 6?

A:

No more, sir.[20]

From the accused-appellant's testimony it can be gleaned that he did not hesitate to run to the rescue of his friend Raffy upon learning that he had been robbed. In fact, he (accused-appellant) was the one who ordered the driver to get out of the taxi. During the cross examination, accused-appellant admitted that he was angry while ordering the driver to alight[21] and that Raffy did not say anything to the driver on that occasion.[22] But when his orders fell on deaf ears, he smashed the windshield with a stone. Only then did the driver return the items belonging to Raffy. Such display of indignation and lionheartedness compels us to reject his story that his wife pulled him away from the scene, then led him back to the house. Under the circumstances, we find it uneasy to accept that his fury was quickly doused when the victim returned Raffy's articles. Consider the following which reflect accused-appellant's mental state: his quick response when he learned that Raffy had been robbed; his gallantry in confronting the driver; and his having been able to confirm the robbery when Juanito returned the subject articles to Raffy, which must have enraged him (accused-appellant) further. In short, accused-appellant took charge of the situation.

In the natural course of events, accused-appellant would not have allowed Raffy, Angel and "Boyong" alone to hit Juanito, to his complete exclusion. A person in such emotional state as accused-appellant would need an outlet to vent his ire, in this case, the person of Juanito who caused his wrath to escalate. As a consequence, and pitted against the positive identification by Ricardo[23] of accused-appellant, the latter's denial can only be unavailing.

But we appreciate passion or obfuscation as a mitigating circumstance in favor of accused-appellant. Obviously, the crime was committed due to an uncontrollable burst of passion provoked by prior unjust or improper acts, or due to a legitimate stimulus so powerful as to overcome reason.[24] Raffy had been accused-appellant's constant companion. They would frequent Peping's Restaurant and the Pateros or INP cockpit.[25] The disclosure by Raffy that he was robbed, coupled with the attempted getaway of the taxi, refusal of the driver to alight and to return the items of Raffy were sufficient causes to induce accused-appellant to overcome reason and self-control.

As regards accused-appellant's conviction for robbery for which he was ordered to pay P11,000.00 representing the total value of the stolen personal belongings and cash money of Juanito, we cannot sustain the trial court. It miserably failed to discuss and support the basis therefor, except for the cash taken from the victim -

The Court holds likewise that the victim actually earned money and these earnings were unlawfully taken by the accused by taking judicial notice of the industry practice in the taxi business, i.e., the 12-hour shift and the 24-hour shift. Since the victim was still plying his route at one o'clock in the morning, he must have been and as testified to, on a 24-hour basis and considering that the garage of the taxi and residence of the victim were both located somewhere in Balintawak, a reasonable inference can be drawn that the victim had earned some money by the time the crime was committed.

With the foregoing , all the elements of robbery, namely: intent to gain, unlawful taking of personal property

belonging to another, and violence against or intimidation of any person, have been duly proved in the instant case, thus the crime committed is robbery complexed with homicide.[26]

Manolito Baful last saw his father Juanito alive in the afternoon of 5 June 1996. He was wearing his watch, ring and necklace. But since the incident occurred at around 1:30 in the morning of 6 June 1996, such that a considerable time had already elapsed from the time he was seen by Manolito alive,[27] the possibility is not very remote that, for one reason or another, those personal belongings were no longer in his possession when Juanito was fatally stabbed; otherwise, to maintain the contrary would be to engage in unwarranted presumptions.

Culled from the other portions of the testimony of the Federico Estonido, President of the EMP Taxi Drivers' Association, accused-appellant took his assigned cab from the garage of EMP Transport Services at 5:00 o'clock in the morning of 5 June 1996. He was on a twenty-four (24) hour duty with a boundary of P860.00.[28] At the time of the incident, which was several hours before his carbarn time, contrary to the baseless inference of the trial court that he had already earned P2,500.00, it is reasonable to deduce from the testimony of Federico Estonido that he had collected more or less P1,000.00.

At any rate, accused-appellant cannot be held liable for the alleged loss of Juanito's earnings. According to Ricardo, accused-appellant was not holding anything when he left the taxi.[29] When the place was already silent, Ricardo went to the Barangay Hall of Ibayo, Tipas, Taguig, but since he found nobody there he proceeded to the police block in Napindan, Ibayo, which was quite far from his place.[30] Two (2) policemen went to the crime scene who, upon discovery that Juanito was already dead, called for investigators. It was the latter who recovered Juanito's wallet empty of money. Thus, although we do not discount the possibility that accused-appellant indeed took Juanito's earnings while inside the cab and hid them from view as to account for Ricardo's failure to see him holding something when he left the vehicle, it is equally possible that when Ricardo went out to seek assistance from the authorities somebody else pulled the robbery, considering that the windshield of the taxi was already broken and its passenger door was unlocked. In this respect, as between accused-appellant's guilt and his innocence, we are constrained to uphold the latter.

As regards his case for robbery with homicide, it is necessary that the robbery itself be established as conclusively as any other essential element of the crime.[31] In the instant case, inasmuch as the prosecution failed to prove the robbery with the quantum of proof required for the conviction of accused-appellant, we can only hold him liable for homicide. Article 249 of The Revised Penal Code punishes the crime of homicide with reclusion temporal. Applying the Indeterminate Sentence Law and appreciating the mitigating circumstance of passion or obfuscation, the maximum penalty to be imposed on accused-appellant should be the minimum of the imposable penalty of reclusion temporal in its minimum period, while the minimum shall be taken from the penalty next lower in degree, which is the full range of prision mayor. Consequently, we find it reasonable to impose on accused-appellant an indeterminate prison term of eight (8) years, six (6) months and twenty (20) days of prision mayor medium as minimum, to twelve (12) years, four (4) months and ten (10) days of reclusion temporal minimum as maximum.

The death indemnity of P50,000.00 awarded by the trial court is sustained as it is in accord with existing jurisprudence.[32] The award relative to the value of the asported items is however deleted in view of our finding that accused-appellant is liable only for homicide, the robbery aspect of the charge not having been sufficiently established. The moral and exemplary damages of P100,000.00 are reduced to a reasonable amount of P50,000.00[33] and are simply denominated as moral damages. Article 2230 of the Civil Code provides that in criminal offenses exemplary damages may be imposed only when the crime was committed with one or more aggravating circumstances, and there are none in the present case. The funeral expenses of P13,000.00 and P120.00 plus expenses of P4,450.00 for the repair of the taxi are likewise deleted for insufficiency if not lack of

evidence. For the recovery of actual damages it is necessary to prove the actual amount of loss with a reasonable degree of certainty premised upon competent proof and on the best evidence obtainable.[34] These damages cannot rest on the bare allegations of witnesses.[35] Regrettably, Manolito Baful and the President of the EMP Taxi Drivers' Association merely testified thereon without submitting supporting documents to prove such damages.

WHEREFORE, the appealed Decision is MODIFIED. Accused-appellant RODEL DIZON Y ABILA is instead declared GUILTY of homicide and sentenced accordingly to an indeterminate prison term of eight (8) years, six (6) months and twenty (20) days of prision mayor medium as minimum, to twelve (12) years, four (4) months and ten (10) days of reclusion temporal minimum as maximum. Accused-appellant is further ordered to indemnify the heirs of Juanito Baful in the amount of P50,000.00 for his death, and another P50,000.00 for moral damages, without subsidiary imprisonment in case of insolvency.

SO ORDERED.

Mendoza, Quisumbing, Buena, and De Leon, Jr., JJ., concur.

[1] Information dated 13 June 1996; Records, p. 1.

[2] Decision penned by Judge (now Associate Justice of the Court of Appeals) Martin S. Villarama Jr. of RTC-Br. 156, Pasig City; Rollo, p. 35.

[3] Grunting or moaning inside.

[4] People v. Hubilla Jr., G. R. No. 114904, 29 January 1996, 252 SCRA 471.

[5] People v. Cabrera, G. R. No. 105992, 1 February 1995, 241 SCRA 28.

[6] Rollo, pp. 34-35.

[7] TSN, 2 October 1996, pp. 4-12.

[8] Id., pp. 19 -20.

[9] TSN, 23 October 1996, p. 12.

[10] Id., p. 27.

[11] Id., p. 33.

[12] Id., p. 31.

[13] See Note 4.

[14] People v. Doro, G. R. No. 104145, 17 November 1997, 282 SCRA 1.

[15] TSN, 2 October 1996, p. 15.

[16] TSN, 11 March 1997, p. 21.

[17] People v. Flores, G. R. No. 116524, 18 January 1996, 252 SCRA 31.

[18] People v. Abrenica, G. R. No. 118771, 18 January 1996, 252 SCRA 54

[19] People v. Nicolas, G. R. No. 110116, 1 February 1995, 241 SCRA 67.

[20] TSN, 10 December 1996, pp. 12-16, 20.

[21] TSN, 11 March 1997, p. 12.

[22] Ibid.

[23] People v. Cabuang, G. R. No. 103292, 27 January 1993, 217 SCRA 675.

[24] People v. Valles, G. R. No. 110564, 28 January 1987, 267 SCRA 103.

[25] TSN, 11 March 1997, p. 5.

[26] Rollo, p. 35.

[27] People v. Cadevida, G. R. No. 94528, 1 March 1993, 219 SCRA 218.

[28] TSN, 23 October 1996, pp. 38 -39. "Boundary" refers to the fixed amount paid by the driver to the owner of a "rented" vehicle, in this case a taxicab, for the use of the vehicle usually for commercial purposes for a specified duration, such as twelve (12) hours or twenty-four (24) hours.

[29] TSN, 2 October 1996, p. 25.

[30] Id., pp. 9-10.

[31] People v. Contega, G. R. No. 133579, 31 May 2000.

[32] Metro Manila Transit Corporation v. Court of Appeals, G. R. No. 116617, 6 November 1998, 298 SCRA 495.

[33] People v. Bugayong. G. R. No. 126518, 2 December 1998, 299 SCRA 528.

[34] People v. Oliano, G. R. No. 119013, 6 March 1998, 287 SCRA 158.

[35] People v. Aguilar, G. R. Nos. 120622-23, 10 July 1998, 292 SCRA 349.

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