

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ARNOLD BACLA-AN LAPITAJE, MARIO REYES, WENDEL ARELLANO Y TANIO AND ROMY BALUYOS Y PINGKI-AN, ACCUSED-APPELLANTS.

G.R. No. 132042. February 19, 2003

Ponente: AUSTRIA-MARTINEZ, J.

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AUSTRIA-MARTINEZ, J.:

Before us for automatic review is a decision dated September 22, 1997, rendered by the Regional Trial Court of Danao City (Branch 25), the dispositive portion of which reads as follows:

“WHEREFORE, the court finds accused Arnold B. Lapitaje, Mario Reyes, Wendel Arellano, and Romy Baluyos GUILTY beyond reasonable doubt of the special complex crime of Robbery with Homicide as charged and defined by the Revised Penal Code, and hereby sentences each to suffer the penalty of reclusion perpetua to death.

“Accused are hereby ordered to pay jointly and severally the sum of P1,210.00, the remaining unrecovered stolen money, unto private complainant Domingo Colonia.

“No other damages are proved in court.

“SO ORDERED.”[1] (Emphasis supplied)

On January 13, 1994, an Information was filed before the trial court against Arnold Bacla-an Lapitaje, Mario Reyes, Wendell Arellano y Tanio and Romy Baluyos y Pingki-an for Robbery with Frustrated Homicide[2] to which they all pleaded not guilty. Despite timely medical attention, victim Nelson Saavedra died by reason of which the Information was amended to Robbery with Homicide. The Amended Information reads as follows:

“That on or about October 31, 1993 at around 7:30 o’clock in the evening, at Barangay Catmondaan, Municipality of Catmon, Province of Cebu, Philippines and within the jurisdiction of this Honorable Court, the said accused, conspiring and confederating together with others whose real names and present whereabouts are still unknown and helping one another did then and there willfully, unlawfully and feloniously, with intent of gain and by means of force, violence and intimidation, to wit: by entering the store of Domingo Colonia, and once inside held up the owner at gun point and thereafter take, steal and carry away cash money worth P2,000.00 belonging to the said Domingo Colonia against his will, to the damage and prejudice of said owner in the sum of P1,210.00 (as the amount of P790.00 was recovered) and shot one NELSON SAAVEDRA in their escape, thereby inflicting wounds and despite timely medical intervention the said wounds caused his death at the Chong Hua Hospital in Cebu City on February 8, 1994 where he was medically treated for several months.

“Contrary to law.”[3]

All accused pleaded not guilty to the Amended Information. Trial ensued.

The prosecution presented oral, documentary and real evidence.

Offended party Domingo Colonia testified as follows: On October 31, 1993, at about 7:30 o'clock in the evening, three unmasked armed men barged inside his store. Two of the men pointed firearms at him, one at his forehead, the other at his nape. They introduced themselves as members of the New People's Army (NPA) asking for aid. He recognized accused Arnold Bacla-an Lapitaje who used to deliver edible oil to his store and was a customer in his tailoring shop. He saw Arnold go to the kitchen and point a firearm at his wife. The man who pointed a firearm at his nape opened the drawer of the table, took the coins amounting to P1,000.00, and took the contents of his wallet which amounted to around P1,000.00. When his wife shouted for help, neighbors came rushing to their aid, prompting the men to leave hastily. After the three men left, they heard gunfires. He learned that the fleeing robbers shot one of his neighbors, Nelson Saavedra, who was rushed by other bystanders to the nearest hospital. The following morning, a dead person was discovered at Sitio Bakhaw in Barangay Catmondaan, Municipality of Catmon, Cebu. Found in the dead man's belongings were assorted coins and bills amounting to P790.00 wrapped in a small towel, a .38 caliber firearm with two live ammunitions and an empty shell. He recognized the deceased as the person who poked a firearm at his forehead the night before. When asked to identify the persons apprehended and detained in jail in Catmon, he recognized accused Arnold Lapitaje.[4]

Rizalina Ares testified as follows: At around 7:30 o'clock in the evening of October 31, 1993, she met three persons coming from the store of Domingo Colonia. One was wearing a colored short sleeve polo, another was wearing a long sleeve fatigue shirt and the last one wore a green shirt. Shortly thereafter, she heard gunfires. She found a neighbor, Nelson Saavedra, who was wounded. She and a brother of the victim rushed the victim to the hospital. The next morning, she learned from Domingo that he was robbed. Later, Rizalina went to the municipal hall. She was able to identify accused Mario Reyes and Arnold Lapitaje, as the two men she met the night before through the t-shirts worn by them. Rizalina said that the person who was found dead the morning after the robbery was the one wearing a green shirt whom she also met that night while she was walking towards Domingo's store.[5]

Fred Ares testified: On the night in question, he heard a woman's voice coming from the highway. When he proceeded towards the highway, he met some of his neighbors who told him about the fleeing robbers. As he directed his gaze towards the direction pointed by his neighbors, he saw a parked taxi marked "Aaron". A speeding Hi-Ace van then arrived. Military men donning firearms alighted from the van and approached the taxi. The military men held the driver of the taxi, a man seated in the first seat and another man about to enter the taxi. The three men who were held by the military were recognized by Fred in the courtroom as the accused Romy Baluyos, Wendel Arellano and Arnold Lapitaje.[6]

Cesar Roldan testified as follows: On the night of October 31, 1993, he was in the house of his uncle located 50 meters away from the place of Domingo when he heard explosions. He ran towards the road where he saw three persons with pistols, two of whom he identified in the courtroom as accused Mario Reyes and Arnold Lapitaje. The third man happened to be the person found dead the morning after the robbery. He recognized the three men that night because of the illumination coming from the fluorescent lamp along the road. Mario Reyes wore a fatigue shirt, Arnold Lapitaje donned an ordinary shirt the color of which Cesar could no longer recall and the third man was wearing a green shirt. Cesar was more than an arm's length from the three men with pistols who proceeded towards the direction of Sitio Bakhaw in Catmondaan coming from the house of Domingo Colonia. As Cesar made his way towards the place of Domingo, he saw Nelson Saavedra lying prostrate on the ground.[7]

SPO2 Calixto Nuñez testified that: he proceeded to the national highway on his motorcycle upon hearing cries for help from his neighbors, at a distance of around 10 meters, he saw a Hi-Ace van with Air Force men as passengers blocking a taxi marked "Aaron"; when he introduced himself as a person in authority, Mauro Oarga who identified himself as a colonel, turned over to him the persons of accused Romy Baluyos, Arnold Lapitaje

and Wendel Arellano; Oarga and his men likewise turned over to him a .22 caliber revolver magnum, five live ammunitions, one empty shell and a hand grenade which was allegedly recovered under the front seat of the taxi much later; he recognized accused Arnold Lapitaje since the latter used to deliver edible oil in their place; he also recognized Wendel Arellano who used crutches, and, Romy Baluyos, as the driver of the taxi; with the help of some barangay tanods, he brought the three men to the police station for proper investigation; early in the morning of the following day, a dead person, recognized by Domingo Colonia as one of the robbers, was found dead; said person may have been killed by the civilian volunteers; in the meantime, the articles recovered by Oarga and his men were submitted to the National Bureau of Investigation (NBI), Central Visayas Regional Office at Cebu City for ballistic examination.[8]

A chemical analysis of the paraffin casts taken from the hands of accused Arnold Lapitaje and Mario Reyes yielded the following results:

“1

POSITIVE result for the presence of gunpowder residues on both hand casts taken from MARIO REYES.

“2

NEGATIVE result for the presence of gunpowder residue on both handcasts taken from ARNOLD LAPITAJE.”[9]

Bonifacio Ayag, a ballistic expert of the NBI, testified that he had conducted a ballistic examination on the specimens submitted to their office upon letter request of the PNP, Catmon, Cebu and that his findings, contained in his ballistic report, are as follows:

“Comparative examinations made between the evidence empty shells marked ‘AS’, ‘AS-1’, ‘AS-2’ and the test shells fired from PALTIK “(COLT) REVOLVER caliber .38 without serial number, marked EF (X on the trigger guard) and paltik (S&W) revolver caliber .22 magnum, SN_11155 (X on the trigger guard) revealed the following results:

“a)

Evidence empty shells marked ‘AS-A1’ and ‘AS-2’ and the test shells fired from PALTIK (COLT) REVOLVER CALIBER .38 without serial number, marked ‘EF’ (X on the trigger guard) gave POSITIVE results; said evidence shells were fired from this particular firearm.

“b)

Evidence empty shells marked ‘AS’ and the test shells fired from PALTIK (S&W) REVOLVER CALIBER .22 MAGNUM, SN – 11155 (X on the trigger guard) gave positive results; said evidence shell was fired from this particular firearm”.[10]

Dr. Wayben Briones testified: He treated Nelson Saavedra who was admitted at the Chong Hua Hospital in Cebu City for multiple injuries on November 1, 1993. Nelson had a gunshot wound located at the right neck injuring the thyroid gland. The wound penetrated the scapular area and also injured the spinal cord which caused Nelson to be paralyzed from the neck to the lower part of his body. Nelson became bedridden in the hospital and developed bedsores but due to financial constraints, he went home on December 7, 1993. He returned to the hospital on January 27, 1994 but died on February 8, 1994 from multiple organ failures caused primarily by the gunshot

wound on the neck.[11]

Lt. Col. Mauro Oarga, an officer of the Philippine Air Force, testified: On October 31, 1993, he and his companions had a beach activity at Catmondaan, Catmon, Cebu. On their way to Catmon, they saw “four” persons running towards a waiting taxi. Finding the actuations of the men to be suspicious, he instructed his driver to overtake the taxi and asked his men to disembark for the purpose of conducting a search on the taxi as well as on the “four” persons who had already boarded the taxi.[12] Accused driver Romy Baluyos and Wendel Arellano were among the persons on board the taxicab. Their body search on the “four” persons as well as on the driver of the taxi failed to yield anything but a search conducted on the taxi produced a .22 caliber revolver with five ammunitions and one empty shell found under the front seat of the taxi. A hand grenade was also discovered at the back portion of the vehicle. Although it was already dark at the time, the group was aided in their search by the headlights of the van which were switched on. Upon arrival of PNP operatives, he turned over the five persons as well as the articles recovered from the taxi.[13]

Sgt. Rogelio Castro testified that: while they were on their way home from Catmondaan their commanding officer, Lt. Col. Oarga ordered the driver of the vehicle to block a certain taxi; they disembarked from their vehicle upon instructions of Lt. Col. Oarga who told them to conduct a search on the taxi; they found the driver, who he could not recognize because it was dark, and, a person with an amputated leg seated in front of the taxi; during his search, Castro saw a .22 caliber firearm under the front seat of the taxi where the man with amputated leg was seated; he gave the firearm to Lt. Col Oarga who handed it over to SPO2 Nuñez, a member of the PNP of Catmon, who arrived at the scene.[14]

The accused refuted the evidence of the prosecution through the testimonies of their witnesses -

Arnold Lapitaje testified: He was a hired helper tasked to collect payments from customers of edible oil supplied by his employer. On October 31, 1993 at around 8:30 o'clock in the evening, he was at Catmondaan supposedly to collect payments from his regular customers, Domingo Colonia and a certain Fredo. He was not able to meet either of the two because Domingo's store was already closed at the time and Fredo was not around. Arnold thought of waiting for Fredo but since he was already hungry, he took his supper at the market place near the seashore. Suddenly, an explosion was heard coming from the highway causing the people to scamper away. Fearing for his safety, he went to one of the houses near the marketplace and continued eating his supper after which he proceeded to the highway to wait for a passenger vehicle bound for Cebu City. It was while waiting for a passenger vehicle that he learned from a group of women about some intruders who barged inside the house of Domingo Colonia and introduced themselves as members of the NPA. When he boarded an Isuzu elf vehicle, a member of the CAFGU (Civilian Armed Forced Geographical Unit) saw him and ordered him to alight from the vehicle. A policeman named Ceniza later arrived and brought him to the municipal hall where he was mauled so as to force him to reveal the identity of the persons involved in the robbery. He had nothing to reveal since he did not know the robbers. As a result of the mauling, he sustained injuries which caused him to have difficulties in standing up and walking. Inside the jail, he met accused Romy Baluyos and Wendel Arellano. Accused Mario Reyes was brought to the jail much later. The policemen told him (Arnold) that Mario identified him as one of the robbers but when confronted, Mario denied having implicated Arnold. The following day, the policemen brought him to Km. 47 where he was again asked to reveal the names of the persons who robbed the house of Domingo Colonia. When he denied any participation in the robbery, he was mauled and tied to an ipil-ipil tree by the policemen, some of whom he recognized as Calixto Nuneza, Bravio and Ares. Although bribed with P5,000.00 to reveal the names of the robbers, he insisted that he did not know the robbers. Much later, he and Mario were brought to the police headquarters at Gorordo Avenue, Cebu City for examination where the policemen poured warm water into their hands.[15]

Arnold further testified that Domingo might have implicated him as one of the robbers because of an incident wherein he accidentally spilled some of the edible oil that he was delivering in Domingo's store which caused some sacks of rice to get wet; that Domingo asked him to replace the spilled edible oil but he refused which angered Domingo.[16]

Accused Wendel Arellano testified: On October 31, 1993, at around 2:30 o'clock in the afternoon, after he had just bought a towel from the White Gold Store in Cebu City, he chanced upon his cousin Mario Albarena. After a brief conversation, he acceded to his cousin's invitation to go to Hagnaya so that the latter can catch a boat heading for Bantayan, Cebu. His cousin hired a taxi and upon reaching Hagnaya, the taxi driver was made to wait while they had some snacks. Afterwards, his cousin boarded the boat bound for Bantayan while he went back to the waiting taxi which was to take him back to Cebu City. The taxi left Hagnaya at around 5:45 o'clock in the afternoon. When they reached Catmondaan at around 7:30 in the evening, the taxi driver stopped the taxi near a lighted post to fill the overheated engine with water. While the driver opened the hood of the car, three persons suddenly boarded the taxi and told him (Wendel), "Do not be afraid, Bay, because we have here a wounded person and we wanted only this wounded person to board this taxi. We are NPAs".[17] Upon returning to the taxi, the driver was startled to find three other persons on board and he moved backward. Nevertheless, the driver went back to his seat after the man told him that they wanted to load a wounded person. Before the driver could even start moving the taxi, a Hi-Ace van stopped in front of the taxi. Armed persons alighted from the van. One of the supposed NPAs told the driver to start the taxi but in his confusion, the driver maneuvered the taxi towards the rear end of the van. The three men jumped off the taxi and ran away leaving him and the taxi driver behind. The men from the van who identified themselves as members of the Air Force, arrested him and the taxi driver whose name he later came to know as Romy Baluyos. A search conducted on the taxi failed to yield anything. Later, an armed person named Nuñez arrived to whom the Air Force men entrusted him and Romy. Nuñez then brought them to the police station and locked them inside the jail. Two other persons arrived in jail whose names he later came to know as Arnold Lapitaje and Mario Reyes. They were implicated in the robbery at Catmondaan although they were not among the persons who jumped off the taxi. At around 2:00 o'clock in the morning of November 1, 1993, Arnold was fetched by policemen. When Arnold returned, he saw some bruises on Arnold. On the same day, Domingo Colonia happened to be in the municipal hall. Domingo was surprised to see Arnold and asked the latter what he was doing there. Arnold asked for help from Domingo saying that he was being implicated in the robbery but a policeman pulled Domingo away.[18]

Wendel further testified that he could not have been seen running towards the taxi because his leg had been amputated in an accident prior to the incident in question; that the case which he had filed in relation to the accident causing his leg to be amputated is still pending in Regional Trial Court, Branch 8, Cebu.[19]

Accused Romy Pingkian Baluyos testified: He had been a taxi driver for more than twenty years. On October 31, 1993, at around 2:30 o'clock in the afternoon, a man boarded the taxi together with another man whose leg was amputated. They arrived at Hagnaya, Cebu at around 5:30 o'clock in the afternoon. His passengers made him wait while they had a merienda. After thirty minutes, the man with the amputated leg returned and informed him that they were to proceed back to Cebu City. Before reaching Bogo, Cebu, the taxi had a flat tire. He had the tire vulcanized after which they proceeded on their way. Sometime later, the engine of the taxi overheated, prompting him to park the taxi at a well lit portion of the road. He refilled the radiator with water which he got from the baggage compartment. When he returned to the driver's seat, there were already three men inside. He was told not to worry, that they were good persons and that they are NPAs with a wounded companion. As Romy started the engine of the taxi, a Hi-Ace van, with armed men on board, stopped in front of the taxi around 25 meters away, prompting the three men who had just boarded the taxi to jump off. The armed men who turned out to be members of the military, alighted from the van, arrested him and his passenger with the amputated leg, identified

later as Wendel Arellano. The armed men searched the taxi but their search proved to be fruitless. When a policeman arrived, they turned him and Wendel over to the policeman. The policeman brought him and Wendel to the Municipal Hall of Catmon, Cebu where they were detained. Another man whose name they later came to know as Arnold Lapitaje was brought in jail. Arnold said that he was a suspect in a robbery which occurred in Catmondaan. Later, another person by the name of Mario Reyes was brought inside the jail. Mario had bruises and contusions all over his face. Arnold and Mario were not among the persons who jumped off from the taxi he was driving on the night of his arrest. He came to know Domingo Colonia only on November 1, 1993 when the latter, upon seeing them all in jail said to Arnold, "Nold, you are here?"[20]

Accused Mario Reyes testified that: on October 29, 1993, he was at Medellin, Cebu in the company of his employer, Bernardino Sabal, who is engaged in the business of rattan poles; Sabal returned to Cebu City ahead of him instructing him to collect payments from debtors in Mandaue City; on October 31, 1993, he headed for Cebu City on board a passenger jeepney; at around 8:00 o'clock in the evening, the jeepney stopped at a check point in Catmondaan and all the passengers were made to alight by the members of the PNP and the CAGU; they were bodily searched and asked to produce a "cedula"; he was held by the PNP despite his protestations and was brought to the police station in Catmon, Cebu after being harmed by angry apprehenders; there were already four persons in jail whose names he later came to know as Jose Jumao-as, Wendel Arellano, Romy Baluyos and Arnold Lapitaje; while he was in jail, he met Domingo Colonia who was surprised to see Arnold in detention; he had fired a gun a number of times, the last of which was on October 15, 1993 when he fired a gun owned by the military in the mountains of Sagaboy, Mati, Davao Oriental.[21]

Bernardino Sabal corroborated the testimony of accused Mario Reyes on certain matters. He testified that: he hired Mario as a worker in his rattan business in Davao Oriental; on October 15, 1993, he and Mario went to Cebu City to sell rattan poles; after a week, they received an invitation from Pablo Inot to go to Medellin, Bogo, Cebu where the latter was engaged in selling rattan and fishing business; he and Mario arrived at Medellin at around 2:00 o'clock in the afternoon; he had to leave the following day for Davao; since Mario was still enjoying himself, he allowed Mario to stay behind but with the instruction that Mario should collect payments without delay from debtors in Mandaue City; unfortunately, Mario was imprisoned and never got to follow him to Davao; he learned from Mario when he visited him in jail that when Mario was on his way to Cebu on board a passenger jeepney, he was told to alight from the vehicle and produce an identification card as well as a community tax receipt at a check point in Catmon, Cebu; although Mario was able to show his community tax receipt, he was ordered to stay and forced to accompany the apprehending officer.[22]

The trial court held:

"By the evidence so presented by the prosecution, the Court finds that all accused acted in concert in committing the act. The Court is convinced that Arnold B. Lapitaje who is familiar with complainant Domingo Colonia at Catmon Daan, Cebu, was the lead man. The Court portrays a situation that it was the two accused Mario Reyes and Arnold Lapitaje who barged into the house and pointed the gun to complainant and wife. That the two accused Wendel Arellano and Romy Baluyos were watchmen outside and that after the robbery and upon fear of reprisals from neighbors who responded to the shout for help of the wife of complainant, the four accused went hurriedly to the waiting taxi on the highway. Such fact of the four running towards the taxi was duly testified by prosecution witness Col. Oarga who, seeing the four rushing to the waiting taxi in suspicious manner, caused their Hi-Ace Van to block the taxi. Thus, the arrest of the four accused and the search on the taxi.

"Both evidence considered, the Court finds overwhelmingly that the four accused acted in concert to commit the act of robbery with homicide, and should be responsible therefore (sic).

“xxx xxx xxx.

“The Court finds no merit the defense of alibi and general denials of accused. The positive identification by prosecution witnesses upon the persons of the accused as perpetrator of the crime negates all allegations “that accused were at some other place at the time of the commission of the offense or that they did not commit the offense as charged.”[23]

and found all accused guilty of Robbery with Homicide and imposing a penalty of “reclusion perpetua to death”. The imposition of said penalty is erroneous and inappropriate.[24] But because of the possibility that death could be the correct imposable penalty, the Court en banc entertained the automatic review of the decision of the trial court. Hence, herein automatic review pursuant to Article 47 of the Revised Penal Code, as amended.

In their Brief, appellants raise the following Assignment of Errors:

“I.

The trial court erred in finding that appellants Wendel Arellano and Romy Baluyos were in cahoots with the other appellant Arnold Lapitaje and Mario Reyes in the perpetration of the crime despite the existence of exculpatory evidence warranting the acquittal of the first duo.

“II.

The trial court erred in relying on the vulnerability of the defense evidence rather than on the strength of the prosecution evidence.

“III.

The trial court erred in not finding that the arrest of all appellants were illegal and the subsequent alleged recovery of incriminatory evidence presented against the latter was a product of a poisonous tree, hence inadmissible in evidence.”[25]

The Solicitor General filed the Brief for Plaintiff-Appellee with Manifestation and Motion recommending that the judgment convicting Wendel Arellano and Romy Baluyos be reversed and set aside, their guilt not having been proven beyond reasonable doubt; and, that the judgment convicting Arnold Lapitaje and Mario Reyes be affirmed with the modification that the penalty of reclusion perpetua should be imposed upon them in the absence of any aggravating circumstance in the commission of the crime charged.

We uphold appellee’s recommendations insofar as appellants Wendel Arellano and Romy Baluyos are concerned, the same being in accordance with the evidence presented by the prosecution and the defense. Both should be absolved from liability.

The well-settled rule is that the trial court’s findings on the credibility of witnesses and their testimonies are accorded great weight and respect, in the absence of any clear showing that some facts or circumstances of weight or substance which could have affected the result of the case have been overlooked, misunderstood or misapplied.”[26]

After a painstaking review of the prosecution evidence, the Court found certain facts and circumstances of such great weight that the trial court overlooked and misappreciated or misapplied, as follows:

- The trial court had erroneously given credence to the testimony of Lt. Col. Oarga who testified that he had seen

four men running towards a waiting taxicab; and that the four who boarded the taxi were apprehended together with the driver. On this basis, the trial court hastily concluded that Wendel and Romy acted as lookouts while Arnold and Mario robbed Domingo's house and that after the robbery, the four ran towards the waiting taxi. The other prosecution witnesses consistently and unequivocally belied the testimony of Lt. Col. Oarga.

Prosecution witness Fred Ares categorically testified that Oarga's men held only three persons: the driver of the taxi, the man with crutches and another who was still about to enter the taxi.[27] Fred Ares further clarified that Wendel was just inside the taxi and was not one of the persons who were running towards the taxi.[28] The testimony of Fred Ares is corroborated by Rizalina Ares who testified that she met three persons coming from the store of Domingo Colonia.[29] Another prosecution witness, SPO2 Nuñez testified that Oarga turned over to him only three persons, namely, the driver Romy Baluyos, Wendel Arellano and Arnold Lapitaje.

- The trial court miserably failed to consider that appellant Wendel had a physical disability. Wendel could not have ran together with the other robbers because he had an amputated leg and walked on crutches.

- The firearm and live ammunitions allegedly found under the front seat of the taxi cannot be used as evidence against Wendel and Romy for they were taken as a result of an illegal search and seizure which will be discussed forthwith.

Thus, Oarga's testimony of the event leading to the arrest of appellants is not accurate and could not be a valid basis for the conviction of appellants Wendel and Romy.

Even if the defense of general denial posited by Wendel and Romy is uncorroborated, the trial court committed an error in disregarding said defense considering that the evidence of the prosecution failed to establish the participation of both accused Wendel and Romy in the commission of the crime charged. As the Court has enunciated in *People vs. Ladrillo*:

"xxx. The rule that this Court should refrain from disturbing the conclusions of the trial court on the credibility of witnesses, does not apply where, as in the instant case, the trial court overlooked certain facts of substance or value which if considered would affect the outcome of the case; or where the disputed decision is based on misapprehension of facts.

"Denial and alibi may be weak but courts should not at once look at them with disfavor. There are situations where an accused may really have no other defenses but denial and alibi which, if established to be the truth, may tilt the scales of justice in his favor, especially when the prosecution evidence itself is weak." [30]

and in *People vs. Albao*:

"xxx denial and alibi, while inherently weak, assume relevance when the evidence of the prosecution linking the accused to the crime is inconclusive." [31]

With respect to appellant Arnold: By the testimonies of prosecution witnesses Fred Ares and SPO2 Nuñez, it is established that Arnold was arrested by Lt. Col. Oarga. However, it must be stated that the warrantless arrest of appellant Arnold together with Wendel and Romy was not lawful. Oarga testified that he caused the arrest of "four men" running towards the taxi since they were acting suspiciously. However, Oarga did not elaborate why he thought said men were acting suspiciously.

Rule 113 of the Rules on Criminal Procedure provides:

"Sec. 5. Arrest without warrant; when lawful --- A peace officer or a private person may, without a warrant, arrest a person:

"A) When in his presence, the person to be arrested has committed, is actually committing, or is attempting to

commit an offense.

“B) When an offense has in fact just been committed, and he has personal knowledge of the facts indicating that the person to be arrested has committed it; and

“C) When the person to be arrested is a prisoner who has escaped from a penal establishment or a place where he is serving final judgment or temporarily confined while his case is pending or has escaped while being transferred from one confinement to another.”

None of the aforesaid circumstances were attendant in the case at bar. The “four men” were not prisoners who had just escaped from a penal establishment. Oarga did not testify that the “four men” he had seen running towards the taxi have earlier committed or were actually committing or attempting to commit an offense in his presence.

Nevertheless, considering that appellant Arnold, had entered his plea and actively participated in the trial of the case, he submitted to the jurisdiction of the trial court thereby curing any defect in his arrest.[32] Legality of an arrest affects only the jurisdiction of the court over his person.[33]

In spite of said waiver, the firearm and live ammunition taken from the taxi during the search, cannot be admitted in evidence against appellants because they were seized during a warrantless search which was not lawful.[34]

A waiver of an illegal warrantless arrest does not also mean a waiver of the inadmissibility of evidence seized during an illegal warrantless arrest. The following searches and seizures are deemed permissible by jurisprudence: (1) search of moving vehicles (2) seizure in plain view (3) customs searches (4) waiver or consent searches (5) stop and frisk situations (Terry Search) and (6) search incidental to a lawful arrest. The last includes a valid warrantless search and seizure pursuant to an equally valid warrantless arrest, for, while as a rule, an arrest is considered legitimate if effected with a valid warrant of arrest, the Rules of Court recognize permissible warrantless arrests, to wit: (1) arrests in flagrante delicto, (2) arrests effected in hot pursuit, and, (3) arrests of escaped prisoners.[35]

Thus, the search cannot be justified on the ground that it involves search of a moving vehicle. Warrantless search of a moving vehicle is allowed only when it is not practicable to secure a warrant because the vehicle carrying the prohibited drugs can be quickly moved out of the area or jurisdiction in which the warrant must be sought. We have already clarified in a number of cases that this exception in no way gives the police officers unlimited discretion to conduct warrantless searches of automobiles in the absence of probable cause. [36] When a vehicle is stopped and subjected to an extensive search, such warrantless search has been held to be valid as long as the officers conducting the search have reasonable or probable cause to believe before search that they will find the instrumentality or evidence pertaining to a crime, in the vehicle to be searched.

As we have earlier found, Oarga and his men did not have personal knowledge of the crime that had just been committed and therefore had no probable cause to believe that they will find the instruments or evidence pertaining to the crime. Consequently, the firearms, empty shell and live ammunitions as well as the hand grenade allegedly found during the search cannot be admitted as evidence.

The above notwithstanding, the trial court did not err in finding both appellants Arnold Lapitaje and Mario Reyes to be the perpetrators of the crime of robbery. Despite the inadmissibility of the guns and ammunitions, both appellants were positively identified by the prosecution witnesses. At the time of the incident, Domingo instantly recognized Arnold who pointed a firearm at his wife. He recognized Arnold although the robbery happened at nighttime because the place was lit by a fluorescent bulb and all three men who entered the store were not wearing masks. Aside from Domingo Colonia, Cesar Roldan positively identified appellants Arnold and Mario as two of

the three men, armed with pistols, who he saw fleeing from the store. Cesar had no motive to testify against appellants. He categorically testified that he saw Mario with a pistol in one hand while running towards the direction of Sitio Bakhaw, Domingo Colonia's place. This is corroborated by the result of the Chemistry Report conducted on appellant Mario which showed the presence of gunpowder residue on both of his hands.

The fact that appellant Arnold did not have any gunpowder residue on both of his hands does not demolish the fact that prosecution witness Domingo Colonia had positively identified Arnold as one of those who robbed his store and the one who pointed a gun at his wife. It simply means that Arnold had not fired the gun he was holding.

However, although appellant Mario may have fired the gun he was holding at the time of robbery, there is no direct or sufficient circumstantial evidence to prove that he or anyone of the appellants had shot deceased Nelson Saavedra or that the latter was shot on the occasion of the robbery. The trial court itself was ambivalent on the matter, to wit:

“While prosecution evidence pointed to deceased Nelson Saavedra as one among the three who came from the house of complainant Domingo Colonia, no convincing evidence is shown that the deceased is one among the perpetrators of the robbery as charged. Possibility may rise that said deceased Nelson Saavedra may have responded to the shout for help by the wife of complainant or being one of the perpetrators of the crime. At any rate, no such intervention, criminally or civilly, was ever interposed by relatives of the deceased. But the evidence on record showed that deceased Nelson Saavedra died during the occasion of robbery.”[37]

While Saavedra was indeed shot on the date of the incident, the only evidence connecting appellants Arnold and Mario to the gunshot wound sustained by Saavedra were the facts that they were seen by prosecution witnesses Rizalina Ares and Cesar Roldan running away from Domingo's store with guns; that gunshots were heard and right after that, Rizalina Ares saw a wounded Saavedra. Rizalina did not actually see the shooting. Neither did any of the other prosecution witnesses testify that they saw any of the appellants shoot Saavedra, or that he was shot while the robbers were fleeing from the store. Notwithstanding the presence of the neighbors who rushed to their aid after hearing the cries for help of the wife of Domingo, the prosecution failed to present any one who might have actually seen how the shooting of Saavedra took place. There was no proof that the gunshot wound which caused the subsequent death of Saavedra came from any of the guns used by the robbers. The prosecution failed to connect the results of the ballistic examination of the guns confiscated by Lt. Col. Oarga to the gunshot wound sustained by the victim. Also, the guns were not admissible in evidence. Thus, there is not enough circumstantial evidence to support the finding that appellants Arnold and Mario should be held responsible for the death of Saavedra. The prosecution evidence failed to prove circumstances that constitute an unbroken chain that led to one fair and reasonable conclusion that points to said appellants, to the exclusion of all others, as the persons guilty of homicide perpetuated on the occasion of, before, during, or after the commission of the crime of robbery.[38]

Consequently, appellants Arnold Lapitaje and Mario Reyes should have been found guilty only of the simple crime of Robbery under paragraph 5, Article 294 of the Revised Penal Code which prescribes a penalty of prision correccional in its maximum period to prision mayor in its medium period ranging from four years, two months and 1 day up to ten years.

That the robbery was committed with the aid of armed men is established by the positive testimonies of prosecution witnesses Domingo Colonia, Rizalina Ares and Cesar Roldan that appellants Arnold and Mario used firearms. It is a generic circumstance under paragraph 8, Article 14 of the Revised Penal Code.

However, the Amended Information did not specifically allege said aggravating circumstance. Although in the narration of how the crime was committed, it is alleged that appellants “held up the owner at gunpoint”, the same

is not a substantial compliance of Sections 8 & 9, Rule 110 of the Revised Rules on Criminal Procedure, to wit.

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

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

In *People vs. Costales*, the Court held that aggravating or qualifying circumstance must be expressly and specifically alleged in the complaint or information; otherwise, it cannot be considered by the trial court, even if proved during the trial.^[39] The above-quoted Rules took effect on December 1, 2000, or after the subject crime of Robbery has been committed. In consonance with Article 22 of the Revised Penal Code, the said Rules are given retroactive effect because they are beneficial to the appellants. Thus, the Court will not take into consideration the aggravating circumstance that the crime was committed with the aid of armed men.

Applying the Indeterminate Sentence Law, one degree lower is *arresto mayor* in its maximum period to *prision correccional* in its medium period or four (4) months and one (1) day to four (4) years and two (2) months. With no mitigating or aggravating circumstance, the imposable penalty may be taken from the period of one (1) year, seven (7) months and eleven (11) days to two (2) years, ten (10) months and twenty (20) days of *prision correccional*, for the minimum period, and from six (6) years, one (1) month and eleven (11) days to eight (8) years and twenty (20) days of *prision mayor*, for the maximum period.

Furthermore, appellant Arnold Bacla-an Lapitaje and Mario Reyes should be ordered to pay jointly and severally, to Domingo Colonia, the amount of P1,210.00, representing the unrecovered stolen money.

WHEREFORE, the decision of the Regional Trial Court of Danao City (Branch 25) is **AFFIRMED WITH MODIFICATIONS**:

Accused-appellants Arnold Bacla-an Lapitaje and Mario Reyes are found guilty beyond reasonable doubt of the simple crime of Robbery and applying the Indeterminate Sentence Law, without any mitigating or aggravating circumstance, they are sentenced to suffer the penalty of two (2) years and ten (10) months of *prision correccional*, as the minimum to eight (8) years and twenty (20) days of *prision mayor*, as the maximum. They are also held jointly and severally liable to pay the sum of P1,210.00 to Domingo Colonia.

Accused-appellants Romy Baluyos and Wendel Arellano are **ACQUITTED**, their guilt not having been proven beyond reasonable doubt. The Director of the Bureau of Corrections is **ORDERED** to implement this Decision forthwith and to **INFORM** the Court within five (5) days from receipt hereof, the date when appellants were actually released from confinement.

Costs de oficio.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Puno, Vitug, Mendoza, Panganiban, Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Corona, Carpio-Morales, and Azcuna, JJ., concur.
Callejo, Sr., J., no part.

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- [1] Rollo, pp. 42-43.
- [2] Docketed as Crim. Case No. 1258.
- [3] Original Records, pp. 63-64.
- [4] TSN, April 21, 1995, pp. 4-23.
- [5] TSN, June 16, 1995, pp. 4-16.
- [6] TSN, July 14, 1995, pp.5-7.
- [7] TSN, August 4, 1995, pp.4-10.
- [8] TSN, September 22, 1995, pp.5-16.
- [9] Original Records, p. 35.
- [10] Id., Exhibit "N", pp. 226-227.
- [11] TSN, June 22, 1996, pp. 22-23.
- [12] TSN, August 14, 1996, pp. 5-7.
- [13] TSN, August 14, 1996, pp. 7; TSN, November 25, 1996, p. 19.
- [14] TSN, November 25, 1996, pp. 22-35; 27.
- [15] TSN, February 13, 1997 (afternoon session per Minute found on p. 265, Original Records), pp. 9-13.
- [16] Id.,
- [17] TSN, January 22, 1997, p. 15.
- [18] Id. pp. 16-29; p. 30.
- [19] Id., pp. 29-30; pp. 32-34.
- [20] TSN, February 13, 1997 (morning session per Minute found on p. 265, Original Records) pp. 3-12.
- [21] Brief for the Accused-Appellants, p. 8; RTC Decision, p. 9.
- [22] TSN, March 12, 1997, pp. 2-8.
- [23] Rollo, pp. 41-42.
- [24] People vs. Palec, 345 SCRA 654; People vs. Mamerto Ranis, Jr., et al., G.R. No. 129113, September 17, 2002.
- [25] Brief for the Accused-Appellants, p. 1; Rollo, p. 75.
- [26] People vs. Mendoza, 327 SCRA 695, 707 [2000].
- [27] TSN, July 4, 1995, p. 6.
- [28] TSN, July 14, 1995, pp. 11-12.
- [29] TSN, June 16, 1995, pp. 4-5.

[30] 320 SCRA 61, 74 [1999].

[31] 287 SCRA 129, 132 [1998].

[32] People vs. Lagarto, 326 SCRA 693, 749 [2000]; People vs. Nitcha, 240 SCRA 283, 294 [1995].

[33] Ibid.

[34] People vs. Chua Ho San, 308 SCRA 432, 444 [1999].

[35] Ibid.

[36] People vs. Wilson Que, 265 SCRA 721, 731-732 [1996] citing People vs. Bagista, 214 SCRA 63, 69 [1992].

[37] Original Records, p. 291.

[38] People vs. de la Cruz, 326 SCRA 324, 334 [2000].

[39] G.R. Nos. 141154-56, January 15, 2002.

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