

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. EDUARDO DE JESUS Y ENRILE, APPELLANT.

G.R. No. 134815. May 27, 2004

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PER CURIAM:

This is an automatic review of the Decision^[1] of the Regional Trial Court of Makati, Branch 64, convicting the appellant of robbery with homicide and sentencing him to suffer the death penalty.

The Case for the Prosecution

SPO3 Eugenio Ybasco was a policeman assigned to the Makati Police Station, Substation Block No. 6 since March 16, 1973.^[2] After his tour of duty, he worked on the sly for a money changer in the vicinity of the Intercontinental Hotel and the Rustan's Supermarket in Makati City. He delivered money for his employer every afternoon. The money was placed in a plastic bag^[3] and he used a bicycle for this extra job.^[4] Everytime Ybasco delivered money to his employer, he passed by Yolanda dela Rapa who was selling cigarettes in the vicinity of the Rustan's Supermarket and the Kimpura Restaurant, Ayala Center, Makati City.^[5] Ybasco was a familiar face among the other cigarette vendors in the area, namely, Lydia, Gina, Jing and Romy.^[6] Dela Rapa called him "Sir Ybasco."^[7]

Sometime in February 1994, Dante Manansala, a native of Barangay Canlubang, Calamba, Laguna,^[8] appellant Eduardo de Jesus, a native of Barangay Tabuyok, Apalit, Pampanga,^[9] and Crispin Del Rosario, the appellant's brother-in-law^[10] and a native of Barangay Tadloc, Los Baños, Laguna,^[11] agreed to stage a robbery in the afternoon of March 7, 1994. On February 15, 1994, the appellant told Del Rosario of the planned robbery.^[12] Del Rosario was told that the financier for the heist was Christopher Nash, a British national residing in the Philippines.^[13] The appellant knew that Ybasco was to deposit US\$250,000 in the bank every afternoon for his employer. They decided to waylay Ybasco on his way to the bank.

At 8:00 a.m. on March 7, 1994, upon Nash's instructions, Del Rosario and the appellant took a Toyota Corolla car with Plate No. TAX 732 from Rolando Fajardo in Tanauan, Batangas. The car was owned by Nash.^[14] While the appellant, Del Rosario and Manansala were on board the car, their confederate, Tonton, had lunch somewhere in Batangas. The group arrived in the vicinity of the parking lot at the Ayala Center near the Rustan's Supermarket and the Kimpura Restaurant on board the same car.^[15] The appellant was armed with a caliber .45 handgun.^[16] Manansala, the appellant and Del Rosario alighted, and conducted a surveillance of the area. Tonton remained in the car. Manansala instructed Del Rosario to position himself as a lookout at the corner of the Rustan's Supermarket, and for the appellant to position himself within the vicinity.^[17] Manansala waited Ybasco near the office of the money changer. Dela Rapa, who was then vending cigarettes, was about five arm's length away from the car.^[18]

At around 6:30 p.m., Ybasco emerged from the office of his employer holding a plastic bag. Manansala contacted Del Rosario and told him that Ybasco was on his way out. He reminded Del Rosario to be on the lookout for anybody who might rush to the succor of Ybasco, while the appellant would take care of Ybasco. Momentarily, Manansala and the appellant confronted Ybasco and told him, "May warrant of arrest ka." They grabbed Ybasco,

handcuffed him and dragged him to the car.[19] Manansala and the appellant had a scuffle with Ybasco when they grabbed the plastic bag from him.[20] Roberto Acosta, a roving security guard, saw the incident and pulled out his .38 caliber gun with Serial No. 172410. On board his motorbike, he sped towards the scene to investigate the incident. Del Rosario confronted Acosta and grappled with him for the possession of the gun.[21] As Del Rosario managed to wrest possession of the gun from Acosta, Manansala ordered Del Rosario to shoot. Del Rosario did as he was told, and shot Acosta in the mouth. They boarded the car, and sped towards EDSA.[22] Dela Rapa was shocked at the sudden turn of events.[23] So was Juanito Mendoza, who had just stepped out from the Rustan's Supermarket and saw the shooting incident.[24]

Wilfredo Delia, another security guard at the Ayala Center, rushed to Acosta's aid and brought him to the Makati Medical Center. Acosta expired at about 10:10 p.m.[25]

Meanwhile, the Toyota Corolla sped towards the direction of Cabuyao, Laguna. Manansala said that they would have no problem because the mayor was his ninong.[26] However, when he looked inside Ybasco's bag and found that it only contained P5,000 instead of the expected US\$250,000, he was enraged. Manansala hit Ybasco on the nape and uttered invectives at the latter. Ybasco explained, "Eh wala naman akong idinedeliber mga anak na ganyan kalaking pera." Manansala took the P5,000 from Ybasco.[27]

Ybasco was transported to a sugar farm at Barangay Pulo, Cabuyao, Laguna. Manansala and the appellant took him out of the car and told him that he would be allowed to board a tricycle. The appellant warned Ybasco not to follow them, as he, (the appellant) was a member of the New People's Army. Believing that Ybasco would be freed, Del Rosario took P80 from the latter's wallet, but returned P50 to him for his fare.[28]

The appellant suddenly shot Ybasco on the head. The latter fell to the ground with his hands still handcuffed.[29] Manansala, the appellant and Del Rosario proceeded to Calamba, Laguna, where Del Rosario alighted after receiving P100 from the appellant for his fare.[30] The appellant explained that the remaining P4,900 would be used for the repair of the car.

In the meantime, police operatives from the Makati Police Station, including SPO4 Tomas Sipin and SPO1 Ramoncito Ocampo, arrived at the Ayala Center to conduct an on-the-spot investigation of the killing of Acosta and Ybasco's abduction.[31] When Dela Rapa informed the policemen that she witnessed the incident, she was brought to the police station where she gave a sworn statement.[32] At 8:10 p.m., Juanito Mendoza arrived at the Makati Police Station and gave a sworn statement where he indicated that he witnessed the shooting incident and saw the get-away car, a Toyota Corolla with Plate No. TAX 732. He also gave a physical description of Acosta's assailant.[33]

At 6:20 a.m. of March 8, 1994, Sofronio Entridicho was at his sugar field and saw the cadaver of Ybasco whose hands were still handcuffed.[34] Entridicho reported what he saw to the Cabuyao Police Station.[35] SPO2 Reynaldo Arcibal of the Cabuyao Police Station reported the finding to the Makati Police Station which dispatched a team of police investigators to Barangay Pulo, Cabuyao, Laguna. The policemen found Ybasco's body and an empty shell from a .45 caliber pistol.[36]

In the meantime, the policemen were able to ascertain that the Toyota Corolla car with Plate No. TAX 732 belonged to Cecilia Tan and her husband Christopher Nash, and that the latter gave the car keys to Rolando Fajardo for car repairs, with instructions to turn it over later to Del Rosario and the appellant.[37] On March 9 and 10, 1994, Rolando Fajardo gave sworn statements[38] to the Makati Police Operatives where he stated that at 8:00 a.m. of March 7, 1994, he turned over the car to the appellant and the latter's brother-in-law, Del Rosario. Fajardo also stated that at 9:00 a.m. of March 8, 1994, Manansala told him how Ybasco was abducted and brought to Cabuyao, Laguna, where he was shot by the appellant.

On March 9, 1994, police operatives arrested Del Rosario at his residence in Barangay Tadloc, Los Baños, Laguna.[39] Del Rosario tried to shoot it out with the policemen using Acosta's service pistol, a .38 caliber revolver which had six live ammunitions, bearing serial number 172410.[40] The gun was turned over to SPO2 Marlon Binotapa at the homicide section of the Makati police department.[41] On the same day, Manansala was arrested at his residence in Barangay Canlubang, Laguna.

On March 12, 1994, Manansala, with the assistance of his counsel, Atty. Sofronio Untalan, Jr., executed an extrajudicial confession in which he narrated how he, the appellant, Del Rosario and Nash, planned to rob Ybasco of the cash he was carrying, including the details of the abduction and the killing.[42] The policemen attempted to arrest the appellant at his residence, but the latter was nowhere to be found. The appellant remained at large.[43]

Tanauan Police Operatives found the white Toyota Corolla with Plate No. TAX 732 in Tanauan, Batangas.[44] The car was turned over to SPO2 Romeo Urbino of the Makati Police Station, who discovered that the said plate number was tampered with and renumbered PTT 134.

From a police line-up of ten persons formed by the Makati Police Station, which included Del Rosario, Dela Rapa was asked to identify Acosta's killer and Ybasco's abductors. Dela Rapa pointed to and positively identified Del Rosario as Acosta's assailant. Dela Rapa gave a supplemental statement[45] pointing to and identifying Del Rosario as the person whom she saw boarding a white car.[46]

In the meantime, PNP Medico-Legal Officer Joselito Rodrigo performed an autopsy on the cadaver of Ybasco and issued Medico-Legal Certificate No. M-006-94 which contained the following findings:

Well-nourished, well-developed male cadaver in rigor mortis with postmortem lividity over the dependent portions of the body. Pale conjunctivae, cyanotic lips and nailbeds. Both upper extremities were handcuffed.

HEAD AND EXTREMITIES

1.

Gunshot wound thru and thru point of entry right zygomatic region measuring 0.9 x 1.2 cms., 10 cms. from its anterior midline with area of smudging and tattooing measuring 4 x 7 cms. directed posteriorwards, slightly downwards and to the left fracturing the right zygomatic bone, maxillary bone, and occipital bone making a point of exit at the posterior neck region measuring 1 x 1.2 cms., 2.5 cms. from its posterior midline.

CONCLUSION:

Cause of death is hemorrhage as a result of gunshot wound of the head.[47]

The doctor also issued the victim's Certificate of Death.[48]

On May 19, 1995, Del Rosario and Manansala were charged with robbery with homicide in an Information, the accusatory portion of which reads:

That on or about March 7, 1994, in the Municipality of Makati, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating with Eduardo de Jesus y Enrile alias "Eddie," Christopher John Nash and one alias "Ton Ton" whose real name and present whereabouts are still unknown and all of them mutually helping and aiding one another, with intent of gain and by means of force, violence and intimidation, to wit: dragging, shoving and pushing inside a Toyota Corolla car, colored white with Plate No. TAX-732 one SPO2 Eugenio Ybasco, did then and there willfully, unlawfully and feloniously take, steal and carry away the following:

- 1) One (1) Cal. 38 revolver Smith & Wesson, with Serial No. AUB-1015;
- 2) Identification Cards;

3) One (1) wallet containing P5,000.00 cash.

belonging to the said SPO2 Eugenio Ybasco, against his will, to the damage and prejudice of the said SPO2 Eugenio Ybasco and/or his heirs and thereafter, the above-named accused, after handcuffing both hands of the said SPO2 Eugenio Ybasco, with intent to kill, did then and there willfully, unlawfully and feloniously, shoot and fire at him with a handgun, thereby inflicting upon the latter a mortal wound which was the direct and immediate cause of his death; that on the occasion of the aforesaid robbery committed on SPO2 Eugenio Ybasco, the above-named accused, did then and there, willfully, unlawfully and feloniously shoot and fire at, with a handgun, one Roberto Acosta y Capirao, a roving security guard detailed at the Ayala Center, who came to the rescue of SPO2 Eugenio Ybasco, thereby inflicting upon him a serious mortal wound which directly caused his death.

CONTRARY TO LAW.[49]

Del Rosario was arraigned on April 5, 1994, assisted by counsel, and pleaded guilty to the charge.[50] On April 15, 1994, Manansala, assisted by counsel, was arraigned and pleaded not guilty.[51] On April 21, 1994, Del Rosario appeared before the court and stated that he wanted to testify and elucidate on how the crime charged was committed by him and his cohorts. The court granted Del Rosario's request. With the assistance of counsel de parte, he forthwith testified on how he, Manansala and the appellant perpetrated the crime.[52] The court, thereafter, rendered judgment convicting Del Rosario of robbery with homicide and sentencing him to suffer reclusion perpetua.[53]

On motion of the public prosecutor, the court admitted the Amended Information filed by public prosecutor. The amendment consisted of the inclusion of Christopher John Nash and the appellant as additional accused.[54] Consequently, the court issued warrants for their arrest. Christopher Nash filed a petition for review of the resolution of the public prosecutor finding probable cause against him for the crime charged. On January 25, 1995, the Secretary of Justice granted the petition and ordered the public prosecutor to move for the withdrawal of the Amended Information as against Christopher Nash only. The public prosecutor filed the motion[55] which the court granted on March 29, 1994.[56] Manansala, through counsel, prayed for the inhibition of the Presiding Judge on the ground of partiality. The court granted the motion. The case was re-raffled to Branch 65 of the court. In the meantime, the prosecution began presenting its evidence against Manansala.

On November 20, 1995, the police operatives arrested the appellant in Cabuyao, Laguna.[57] The appellant was arraigned, with the assistance of counsel on February 13, 1996, and entered a plea of not guilty.[58] On November 6, 1996, Manansala died while under detention due to a mauling incident.[59] The case against him was dismissed,[60] while trial against the appellant continued. Considering that Del Rosario was detained at the national penitentiary, the court conducted a trial thereat on May 20, 1997, where Del Rosario testified for the prosecution and was cross-examined by the appellant's counsel.[61]

The appellant, through counsel, admitted the due execution of the sworn statement of Rolando Fajardo,[62] Juanito Mendoza,[63] Marcelina Acosta[64] and Dolores Ybasco,[65] and waived his right to cross-examine the said witnesses.[66] The prosecution no longer presented the affiants as witnesses.

The Evidence for the Appellant

The appellant denied any involvement whatsoever in the crime charged. He did not know of any person named John Nash. He denied being in the company of Manansala, Del Rosario and a certain Tonton in the evening of March 7, 1994.[67]

The appellant testified that in February 1994, he purchased a tricycle for P46,705 in Calamba, Laguna. He borrowed the amount from his sister. He had the tricycle registered in his name.[68] He drove the tricycle

everyday to eke out a living, plying the route in Barangay Tabuyoc, Apalit, Pampanga, from 6:00 a.m. to 9:00 p.m.[69]

On March 7, 1994, the appellant took out his tricycle to ply his usual route. At around 5:00 p.m. that day, he dropped off his passenger, Mrs. Silvina Lumba, at the market. They had agreed that he would pick her up from the market, then drop her off at her house. The distance from the market to the Lumba residence was about 2-1/2 kilometers. The trip took him about one hour.[70] On March 10 or 11, 1994, policemen raided his house, but failed to arrest him.[71]

The appellant admitted that he had known Manansala in Pampanga since he was a boy. He alleged that Del Rosario was the brother of his wife, Cecille; hence, his brother-in-law.[72] After he and Cecille were married, they resided in the house of his in-laws where Del Rosario was also staying.[73] There was a time when he and Del Rosario had a violent altercation. As he was also a sewing machine mechanic by profession, Del Rosario asked him to alter a pair of pants, but the appellant refused to do so. Del Rosario then smashed the sewing machine[74] and the two of them exchanged fist blows.[75] Since then, Del Rosario harbored a grudge against him. Later, he and Cecille parted ways. She married a Swedish national and resided in Sweden,[76] bringing their daughter Diane Joyce along with her. The appellant had five children with his new partner. Del Rosario was also mad at him because he had planned on filing a case against his sister for marrying a foreigner.

The appellant was in the house of his aunt on March 11, 1994 when he learned that he had been implicated in the case. A team of policemen, together with Manansala and Del Rosario, raided his house. He saw his co-accused in a “bugbog-sarado condition.”[77] He also received information that Del Rosario and Manansala were tied to a bridge and dipped into the river while under the custody of policemen.[78] Upon the advice of his brother, the appellant decided not to surrender, as he was afraid that he might also be mauled and hurt by the police.[79] The appellant, thereafter, worked in Binangonan, Rizal.[80] He was arrested on November 20, 1995[81] and was brought to Camp Vicente Lim,[82] where he was treated well and subjected to physical examination.

While in prison, Del Rosario told the appellant that he would be impleaded and jailed as he had abandoned his sister, and that Del Rosario was intending to file a case against him.[83] The appellant received a letter with a Christmas card from his daughter in Sweden.[84] He also received a letter from Del Rosario dated December 4, 1997 through Pinky Dizon, the wife of one of the inmates at the penitentiary.[85] In the said letter, Del Rosario stated that the appellant was not involved in the case and apologized for implicating him. The appellant also received a letter from Del Rosario sometime in Easter, suggesting that he ask for a hearing so that Del Rosario could testify and clear him of the crime charged. The appellant also alleged that before Manansala died, the latter disclosed that he executed a statement implicating the appellant because he (Manansala) was tortured by policemen.[86]

Silvina Lumba corroborated the testimony of De Jesus. She testified that at 5:00 p.m. on March 7, 1994, she contracted the services of the appellant to transport her in his tricycle, going to and from the market. They arrived at her house at around 6:30 p.m.[87] The appellant asked her to appear in court and to testify.[88]

Rosario Dizon Lopez testified that sometime in November or December 1997, she visited her husband Jerry Lopez at the Makati City Jail where she met Del Rosario. She again met Del Rosario in Muntinlupa where he would ask her to deliver letters[89] to the appellant, who was then detained at the Makati City Jail.[90] The jail warden never knew that the said letters were handed to her; neither were her things inspected when she left the national penitentiary. Lopez did not course the letters through the jail warden, but would simply go directly to the jail guards who would inspect the letters and read them. She was then allowed to bring the letters in. Furthermore, the visits in the Makati City Jail were not recorded in the logbook; nor was she required to sign therein. At times,

her forearms were stamped to indicate that she was a visitor.[91] She also recounted that sometime in 1997, the appellant asked for money from Del Rosario, but the latter did not send any.[92]

Jennifer Obina, the appellant's live-in partner, testified that the latter worked as a sewing machine mechanic in a garment factory in Pasong Tamo Extension, Makati, when they started living together. In 1988, she was engaged in the business of selling fish and tinapa. Sometime in February 1994, the appellant bought a tricycle and drove it as a means of livelihood. He would start plying his route, usually around the market and the municipal hall, at 6:00 a.m. until 5:00 p.m. everyday of the week.

On March 10, 1994, Obina was surprised to learn that the appellant was implicated in a kidnapping and killing incident which was aired over the television and radio.[93] Also on the said date, policemen in civilian clothes who were looking for her "husband" raided their house.[94] The appellant, however, was not there, but was within the vicinity of his aunt's house. The policemen never showed any warrant of arrest or search warrant. They just went inside the house and poked a gun at her head. They forced her to reveal where the appellant was, but she refused to do so.[95] Neither was she informed why they were looking for him. The policemen merely told her that the appellant was a criminal and a killer. Although the appellant knew that he was "wanted" for the kidnapping and killing incidents, he just ignored the matter.[96] Obina later learned from the appellant's cousin that the latter had already left for Manila.[97] The appellant did not return for about a week, and thereafter, stayed with his aunt in Taguig.[98]

After trial, the court rendered judgment finding De Jesus guilty of the crime charged, the decretal portion of which reads:

WHEREFORE, in view of the foregoing, judgment is rendered finding the accused EDUARDO DE JESUS Y ENRILE GUILTY beyond reasonable doubt of the crime of Robbery with Homicide and sentencing him to suffer the penalty of DEATH; to indemnify the heirs of the deceased SPO2 Eugenio Ybasco and Roberto Acosta in the sum of P50,000.00 each family; and to pay the heirs of SPO2 Eugenio Ybasco the sum of P500,000.00 by way of moral damages.[99]

The trial court relied principally on the testimony of Dela Rapa and Del Rosario, corroborated by the other evidence on record, in convicting the appellant of the crime charged. It considered the testimony of Del Rosario on April 21, 1994 as a judicial confession, admissible in evidence not only against the confessant (Del Rosario) but also against the appellant.

The appellant now assails the decision of the trial court on the following grounds:

- THE TRIAL COURT ERRED IN NOT FINDING THAT THE EVIDENCE OF THE PROSECUTION IS INSUFFICIENT TO PROVE THE GUILT OF ACCUSED-APPELLANT BEYOND REASONABLE DOUBT.
- THE TRIAL COURT ERRED IN ADMITTING THE JUDICIAL CONFESSION OF ACCUSED CRISPIN DEL ROSARIO AND IN USING THE SAME AGAINST THE OTHER ACCUSED, INCLUDING ACCUSED-APPELLANT EDUARDO DE JESUS, IMPLICATING THEM TO THE CRIME CHARGED, DESPITE THE FACT THAT THE SAME IS INADMISSIBLE IN EVIDENCE. MOREOVER, THE AFFIDAVIT OF ACCUSED DANTE MANANSALA POINTING TO ACCUSED-APPELLANT AS THE ASSAILANT IS LIKEWISE INADMISSIBLE IN EVIDENCE.
- HE TRIAL COURT ERRED IN DECLARING THAT ACCUSED-APPELLANT CONSPIRED WITH THE OTHER ACCUSED IN COMMITTING THE CRIME CHARGED.
- THE TRIAL COURT ERRED IN OUTRIGHTLY DISREGARDING ACCUSED-APPELLANT'S DEFENSE OF ALIBI AND DENIAL, DESPITE THE FACT THAT THE SAME IS CREDIBLE AND WAS

CORROBORATED BY ANOTHER WITNESS.

- THE TRIAL COURT ERRED IN APPRECIATING AGAINST THE ACCUSED-APPELLANT THE AGGRAVATING CIRCUMSTANCE OF TREACHERY.

- THE TRIAL COURT ERRED IN HOLDING THAT THE CRIME OF ROBBERY WITH HOMICIDE WAS COMMITTED DESPITE THE FACT THAT NO ROBBERY ACTUALLY TOOK PLACE.

- THE TRIAL COURT ERRED IN CONVICTING THE ACCUSED-APPELLANT AND IN IMPOSING UPON HIM THE SUPREME PENALTY OF DEATH, AND IN NOT ACQUITTING HIM OF THE CRIME CHARGED, DESPITE THE FACT THAT THE PROSECUTION'S EVIDENCE AGAINST ACCUSED-APPELLANT FAILED TO STAND THE CRUCIBLE TEST OF REASONABLE DOUBT TO OVERTHROW THE CONSTITUTIONALLY GUARANTEED PRESUMPTION OF INNOCENCE.[100]

The appellant contends that the prosecution failed to prove the commission of the crime charged beyond reasonable doubt. While the prosecution may have proved the killing of Acosta and Ybasco, it, however, failed to prove that the appellant divested Ybasco of P5,000.

The appellant also avers that the prosecution failed to prove that he was one of the malefactors, and his precise participation in the commission of the crime charged. He asserts that absent proof of conspiracy, Del Rosario's judicial confession is admissible in evidence only against the confessant but not against him. Moreover, the appellant asserts, the said judicial confession came from a "polluted source," as Del Rosario himself admitted to being one of the malefactors. Thus, his testimony must be scrutinized with care and subjected to grave suspicion. The appellant further avers that Del Rosario even stated that Manansala was Ybasco's assailant. He argues that Del Rosario himself could also have been the assailant, as it was he who shot Acosta when the latter tried to rescue Ybasco.

According to the appellant, Del Rosario implicated him, his own brother-in-law, because they often quarreled with each other. The appellant had made life miserable and unbearable for Del Rosario, and the latter's sister, who was later impelled to marry a Swedish national. As shown by Del Rosario's letters to the appellant, the former himself apologized to the latter for having falsely implicated him in the crime charged.

Contrary to the ruling of the trial court, Del Rosario's letters to the appellant were not hearsay. The prosecution could very well have presented Del Rosario anew to refute his allegations, but the prosecution failed to do so. The appellant further argues that Manansala's extrajudicial confession is hearsay, because the latter died before he could testify and later be cross-examined by the appellant thereon. Moreover, the affidavits and testimony of Dela Rapa, as well as Del Rosario's judicial confession, are utterly insufficient on which to anchor a finding that the appellant was one of the malefactors and that he conspired with the perpetrators of the crime, namely, Manansala and Del Rosario. Finally, the appellant concludes that Dela Rapa failed to identify him as one of the malefactors.

We have meticulously reviewed the records and we are convinced beyond cavil that the prosecution adduced proof beyond reasonable doubt that the appellant, Del Rosario and Manansala, conspired to rob Ybasco of US\$250,000 through violence and intimidation and that the appellant was one of the perpetrators thereof; hence, criminally liable therefor as a principal by direct participation.

The Felony of Robbery
With Homicide

Article 294, paragraph 1 of the Revised Penal Code provides:

Art. 294. Robbery with violence against or intimidation of persons – Penalties. - Any person guilty of robbery

with the use of violence against or any person shall suffer:

1. The penalty of reclusion perpetua to death, when by reason or on occasion of the robbery, the crime of homicide shall have been committed, or when the robbery shall have been accompanied by rape or intentional mutilation or arson.

For the accused to be convicted of the said crime, the prosecution is burdened to prove the confluence of the following elements:

- (1) the taking of personal property is committed with violence or intimidation against persons;
- (2) the property taken belongs to another;
- (3) the taking is *animo lucrandi*; and
- (4) by reason of the robbery or on the occasion thereof, homicide is committed.[101]

In robbery with homicide, the original criminal design of the malefactor is to commit robbery, with homicide perpetrated on the occasion or by reason of the robbery.[102] The intent to commit robbery must precede the taking of human life.[103] The homicide may take place before, during or after the robbery. It is only the result obtained, without reference or distinction as to the circumstances, causes or modes or persons intervening in the commission of the crime that has to be taken into consideration.[104] There is no such felony of robbery with homicide through reckless imprudence or simple negligence. The constitutive elements of the crime, namely, robbery and homicide, must be consummated.

It is immaterial that the death would supervene by mere accident; or that the victim of homicide is other than the victim of robbery, or that two or more persons are killed or that aside from the homicide, rape, intentional mutilation, or usurpation of authority, is committed by reason or on the occasion of the crime. Likewise immaterial is the fact that the victim of homicide is one of the robbers; the felony would still be robbery with homicide. Once a homicide is committed by or on the occasion of the robbery, the felony committed is robbery with homicide. All the felonies committed by reason of or on the occasion of the robbery are integrated into one and indivisible felony of robbery with homicide. The word “homicide” is used in its generic sense. Homicide, thus, includes murder, parricide, and infanticide.

Intent to rob is an internal act but may be inferred from proof of violent unlawful taking of personal property. When the fact of asportation has been established beyond reasonable doubt, conviction of the accused is justified even if the property subject of the robbery is not presented in court. After all, the property stolen may have been abandoned or thrown away and destroyed by the robber or recovered by the owner.[105] The prosecution is not burdened to prove the actual value of the property stolen or amount stolen from the victim. Whether the robber knew the actual amount in the possession of the victim is of no moment because the motive for robbery can exist regardless of the exact amount or value involved.[106]

When homicide is committed by reason or on the occasion of robbery, all those who took part as principals in the robbery would also be held liable as principals of the single and indivisible felony of robbery with homicide although they did not actually take part in the killing, unless it clearly appears that they endeavored to prevent the same.[107]

If a robber tries to prevent the commission of homicide after the commission of the robbery, he is guilty only of robbery and not of robbery with homicide. All those who conspire to commit robbery with homicide are guilty as principals of such crime, although not all profited and gained from the robbery. One who joins a criminal conspiracy adopts the criminal designs of his co-conspirators and can no longer repudiate the conspiracy once it has materialized.[108]

Homicide is said to have been committed by reason or on the occasion of robbery if, for instance, it was committed to (a) facilitate the robbery or the escape of the culprit; (b) to preserve the possession by the culprit of the loot; (c) to prevent discovery of the commission of the robbery; or, (d) to eliminate witnesses in the commission of the crime. As long as there is a nexus between the robbery and the homicide, the latter crime may be committed in a place other than the situs of the robbery.

The Prosecution Adduced Proof
Beyond Reasonable Doubt That
The Appellant Conspired With Del
Rosario And Manansala To Commit
Robbery With Violence Against Or
Intimidation Of Persons

Under Article 8 of the Revised Penal Code, there is conspiracy when ten or more offenders agree to commit a felony and decide to commit it. Conspiracy may be proved by direct evidence or by circumstantial evidence. Conspiracy must be shown as distinctly and conclusively as the crime itself.[109] It may be declared from the acts of the suspect before, during and after the commission of the felony which are indicative of a joint purpose, concocted action and concurrence of sentiments.[110]

To be a conspirator, one need not participate in every detail of the execution; he need not even take part in every act or need not even know the exact part to be performed by the others in the execution of the conspiracy. Each conspirator may be assigned separate and different tasks which may appear unrelated to one another but, in fact, constitute a whole collective effort to achieve their common criminal objective.[111] Once conspiracy is shown, the act of one is the act of all the conspirators. The precise extent or modality of participation of each of them becomes secondary,[112] since all the conspirators are principals. To exempt himself from criminal liability, a conspirator must have performed an overt act to dissociate or detach himself from the conspiracy to commit the felony and prevent the commission thereof.[113]

In this case, the appellant, Del Rosario and Manansala, intended to abduct Ybasco and divest him of money in the amount of US\$250,000, which they thought Ybasco was about to deposit in the bank. Each of them had specific tasks to perform: the appellant and Manansala were tasked to abduct Ybasco, handcuff him and board him in their car, while Del Rosario acted as a lookout who would prevent anyone from interfering with Ybasco's abduction and the consummation of the robbery. The trio performed their tasks with precision. In the process, Del Rosario shot and killed Acosta who was on patrol within the vicinity and had rushed to the scene to investigate the incident. The appellant and Manansala abducted Ybasco, handcuffed him and boarded him in the car. Del Rosario took Acosta's service gun bearing serial number 172410 after killing the victim. This is gleaned from the Del Rosario's testimony, viz:

FISCAL BACULI

Q

Isinusumpa mo ba na ang lahat ng sinasabi mo ay pawang katotohanan lamang?

A

Oho, sir, siya rin ho ang nagsabi niyan sa akin narinig ko sa kanyang bunganga, ngayon pagdating naming dito ng mga menus kinse bago magalas-sais dito sa may kotse doon piplano (sic) ni Dante kung paanong posisyon ang gagawin dinala niya ako sa may kanto ng Rustan's si Eddie doon niya ipinuwesto sa may banda roon ng aking

puwesto tapos ho si Dante dito naman siya sa may malapit sa money changer siya ang tumitingin at umaagap dito kay sir Ybasco, ngayon ho nong dumating ang oras ng labas ni sir Ybasco nauna si Dante kasunod si sir Ybasco ngayon ho pagdating sa akin sa may kanto sabi sa akin ni Dante “nandiyan na bahala ka diyan” sabi sa aking ganon kung meron mang humarang ikaw ang bahala upakan mo sabi sa aking ganon ako naman ang bahala dito kay tanda kay tatang sabing ganon tutulungan ko si Eddie dito sa pagipit, ngayon ho nong lumampas sa akin si sir Ybasco dalawa na sila doon si Dante at si Eddie ngayon ho nakita ko dinakot nila si sir Ybasco pinosasan nila tapos pilit nilang isinakay sa kotse siya naming dating nong guwardiya at tinanong sa akin “bakit anong ibig sabihin niyan” at nakahawak sa pulohan ng baril ngayon ho natakot naman ako dahil nakahawak sa pulo ng baril baka ako barilin ngayon ho sa lito ko hindi ko maintindihan kung anong gagawin ko ang ginawa ko ho pagbunot niya ng baril yon pinilit agawan ng baril habang inaagaw ko ang baril sigaw naman ng mga ito pilitin mong maagaw tapos iputok mo sa kanya.

COURT

Sino ang nag-utos sa iyo non?

A

Si Dante po, sir, tapos po di hindi ko naman inintindi yon dahil alam ko naman ang gagawin ko dahil ako naman talaga ang mamamatay kung bibitawan ko eh yon ho pagkaagaw ko ng baril kaysa ako ang mamatay siya na ho ang pinutukan ko.[114]

Del Rosario’s testimony is corroborated by the fact that Acosta’s firearm was found in his possession when he was arrested by the police,[115] and by Dela Rapa’s sworn statements to the Makati police office as well as her testimony:

Q

While selling cigarette at that date and time, do you still remember or recall of any unusual incident that happened on that date and time?

A

Yes, sir.

Q

Please inform the Court what was that unusual incident that happened on that date and time?

A

Mr. Ybasco was forcefully dragged into the white car, sir.

Q

Who is this Mr. Ybasco, if you know?

A

I called him “Sir Ybasco,” sir.

Q

Why do you addressed him “Sir Ybasco?”

A

Because I know him for a long time and I’m selling cigarette for a long time, sir.

Q

Do you know where he was connected?

A

Yes, sir.

Q

Where?

A

Money Changer, Sir.

Q

Do you know also if he is [a] member of [the] Makati Police Headquarters?

A

Yes, sir.

Q

How long have you know[n] him as [a] member of the Makati Police Headquarters?

A

As far as I know I am selling for thirteen years and he is also working at the Makati Police Headquarters for thirteen years.

Q

Do you know what was his position or nature of his work at the Makati Police Headquarters?

A

I do not know, sir.

Q

A while ago, you said that with the same date and time, you saw some persons shoving, dragging and pushing Eugenio Ybasco inside a white car, do you know the identities of these some (sic) persons?

A I cannot remember the persons who dragged, shoved and pushed Eusebio Ybasco inside the car because it was a little bit dark, sir.

Q But, were there lights that (sic) date and time?

A Yes, sir.

Q How many lights were there at that place and time?

A There were several lights at that date and time, because it is a parking lot and there were lights in the Kimpura, sir.

Q Do you still recall how many persons were pushing, shoving and dragging Eugenio Ybasco inside a white colored car?

A Around three (3) persons, sir.

Q Are these three (3) persons male or female?

A Male, sir.

Q Now, what happened then when these three male persons pushed, dragged or shoved Eugenio Ybasco inside the white car?

A After Eusebio Ybasco was pushed inside the car he (witness is referring to Crispin Del Rosario) shot Mr. Acosta, a certain Security Guard.

Q Are you sure that he was the one who shot a certain Security Guard Roberto Acosta?

A Yes, sir.

Q Did you see him actually shoot a certain Roberto Acosta?

A Yes, sir.[116]

Juanito Mendoza, likewise, corroborated in part the testimonies of Del Rosario and Dela Rapa.[117] The barefaced fact that Dela Rapa and Mendoza did not see the face of the appellant and could not identify him as one of Ybasco's abductors does not negate the fact that they witnessed the abduction and the killing of Acosta.

The Prosecution Adduced Proof
Beyond Reasonable Doubt that
the Appellant and his Cohorts
Divested Ybasco of P5,030.00 And
That The Appellant Shot Ybasco And
Acosta To Death On The Occasion
Or By Reason Of Robbery

We reject the appellant's contention that the prosecution failed to prove that the appellant and his cohorts divested Ybasco of P5,030.00, and his argument that Ybasco was shot by either Manansala or Del Rosario. The prosecutor adduced proof beyond reasonable doubt that Del Rosario shot Acosta in Makati, that the appellant

divested Ybasco of P5,000.00, and that Del Rosario divested the victim of P30.00. This is gleaned from the testimony of Del Rosario, viz:

FISCAL BACULI

Ikaw ba ay handang tumestigo laban kay Dante Manansala kung bibistahan uli ang kaso niya?

A

Opo, sir, tapos po nakita ko pong naisakay na si sir Ybasco na hindi ko naman alam na pulis pala at pagkakita ko pong nakasakay na sila ako nama'y takbo tapos may bumaril pa ho sa loob ng kotse kaya nagkaroon ng sira yung likuran ng kotse hindi ko ho matiyak kung ako ang binaril nila o yong guwardiya dahil ang alam ko talaga ako ang nakabaril sa guwardiya wala naman silang babarilin kundi ako lang talaga dahil ako nama'y biktima nila ngayon po pagdating naming sa kotse umandar na kami papunta kami ng expressway sa madalit sabi ho di nasa expressway na kami nong malapit na kami sa Cabuyao ang sabi ni Dante "nandito na tayo sa Cabuyao ninong ang mayor diyan wala tayong problema dito na lang natin itumba yan" hindi naman ho ako makapagsalita dahil marami naman ho sila eh di pagdating ho ng Cabuyao doon sa may tubohan tumigil ho ang kotse at bumaba si Dante, pagbaba ni Dante ang sabi narinig ko "teka muna titingnan ko muna baka may tao" dahil madilim ho ang lugar tapos ho nong makita niyang walang tao sabi niya kay Eddie "sige Ed ibaba mo na yan si tatang" ngayon bago niya ibinaba si tatang akala ko pasasakayin niya ng tricycle dahil ang sabi ni Eddie sa loob ng tricycle eh pakakawalan na naming kayo basta huwag lang kayong hahabol kami'y eh mga NPA sabing ganon pa ni Eddie hindi naman kami NPA si Eddie lang ang NPA yon ang panakot sabi naman ni sir Ybasco "sige wala tayong problema mga anak sabi niyang ganon" ngayon ho ibinaba nila si sir Ybasco, si Eddie at si Dante dinala ho sa banda roon, akala ko naman talagang pasasakayin nila ng tricycle dahil yong pera ho sa bulsa ni sir Ybasco na baryang otsenta pesos ako pa ho ang kumuha non at ako pa ho ang nagbigay ng singkuwenta pesos kay sir Ybasco ngayon ho nong pagkababang yon nakita ko hong tinututukan ni Eddie kasama si Dante dahil ipinagmamalaki niya na ninong nga daw niya yong meyor doon at malakas siya sa Cabuyao. Ngayon ho di patay yong tao nakita ko tagilid siyang bumagsak tapos eh tumihayang ganon tapos eh uulitin ng baril kaya lang hindi na naulit dahil bumatangal daw yong baril kaya hindi na ho pumutok.

COURT

Sino ang bumaril?

A Si Eddie po ang nakita kong bumaril pero ang nagbaba ho ng tao ay silang dalawa, si Eddie at si Dante, ngayon ho pagdating naming sa Calamba yon ibinaba na nila ako sa Calamba binigyan niya ako ng pera isangdaang piso.

FISCAL BACULI

Sino ang nagbigay ng pera sa iyo?

A Si Eddie po dahil nasa kanya yong pera eh, ngayon ho di binigyan na ako ng perang isandaang pisong pamasahé at marami pa raw hong papartihan ... (interrupted).

COURT

Magkano bang nakuha n'yo?

A P5,000.00 lang, sir, at ipapaayos pa raw ang salamin sa likod dahil sira dahil habang kami'y nananakbo eh nalaglag na yong salamin ngayon ho hindi ko na alam kung saan nila dinala yong kotse at saka isa pa ho sobra ho

galit niya kay sir Ybasco hinahanap niyang maigi ang pera na \$250,000 daw.

FISCAL BACULI

Sino?

A Si Dante ho, sir, nong kami'y nasa expressway galit na galit yan kay sir Ybasco minumura niyang magaling yong matanda at binabatukan pa ho ng patunog hinahanap yong perang \$250,000 bakit daw hindi siya nagdeliber ngayon hinahanap niyang magaling sabi naman ho ni sir Ybasco "eh wala naman akong idenideliber mga anak na ganyang kalaking pera" ang akala ko meron ng pera sabi pa niyang ganon eh pagtingin ko naman ho sa bag sa loob ng bag eh wala naman ho ang nakita ko lang ay baunan nong mga oras na yon.[118]

It is true that when Del Rosario continued with his testimony during the trial on May 20, 1997, he admitted to having pleaded guilty to robbery with homicide, but declared that no robbery took place:

PROS. BAGAOISAN

Mr. Witness, do you recall that you pleaded guilty to the offense Robbery with Homicide before Branch 65, Regional Trial Court, Makati City?

WITNESS

Yes, sir, but there was no robbery that took place on that day.[119]

Del Rosario even declared on re-direct examination that no money was found in the possession of Ybasco and that when he testified on April 21, 1994, his mind was confused:

PROS. BAGAOISAN

Yes, Your Honor.

Q Mr. Witness, you testified on cross-examination that there was (sic) no robbery that (sic) was committed, am I correct?

WITNESS

Yes, sir.

PROS. BAGAOISAN

But in the hearing of April 21, 1994, particularly on page 18 of the transcript of stenographic notes, the Court asked you [a] question and I repeat: Magkano ba ang nakuha ninyo? Five thousand lang, sir. How do you reconcile now your testimony that there was no robbery to your answer to that question that you were able to take the amount of five thousand pesos?

WITNESS

Well sir, what I know is that their target was the money changer because the money changer where Sir Ybasco has a part time job but they were thinking that the old man takes the money to the bank.... and Sir Ybasco takes the money to the bank. They are planning to holdup Sir Ybasco but they were not able to find money from him, sir.

PROS. BAGAOISAN

Now, where did you get then this amount of five thousand pesos?

WITNESS

Well, sir, at that time my mind was confused, I have said that amount five thousand pesos, but the truth is there was no money found from Sir Ybasco, sir.[120]

Indeed, Del Rosario's testimony during the trial on May 20, 1997 is inconsistent with his testimony during the trial of April 21, 1994. But the trial court rejected the aforementioned testimony of Del Rosario on May 20, 1997, and gave credence to his testimony on April 21, 1994.

We agree with the trial court.

First. When the public prosecutor asked Del Rosario to affirm and confirm the truth of his answers to the questions propounded on him during the trial of April 21, 1994,[121] Del Rosario unequivocally declared that his answers to the said questions were true, and that he was not coerced, forced or intimidated into answering:

PROS. BAGAOISAN

After you pleaded guilty before Branch 65 Regional Trial Court, Makati City, do you recall that the Presiding Judge and the Fiscal propounded questions to you regarding that incident?

WITNESS

Yes, sir.

PROS. BAGAOISAN

In other words, there was a hearing conducted after you pleaded guilty to the offense charged?

WITNESS

Yes, sir.

PROS. BAGAOISAN

Now, Mr. Witness, I am showing to you an official transcript of stenographic notes of Branch 65 Regional Trial Court, Makati City, certified true and correct by Court Stenographic Reporter Ms. Concepcion Padua, will you please go over the same and tell us if these are the same questions that were propounded to you and these are the same answers that you have given to the questions?

WITNESS

Yes, sir, these are the questions that were asked and these are my answers.

PROS. BAGAOISAN

Mr. Witness, under your present oath, do you still affirm and confirm the truthfulness and veracity by (sic) your answers to the questions propounded to you by the Presiding Judge and the prosecutor?

WITNESS

Yes, sir.

PROS. BAGAOISAN

Were you forced, coerced or intimidated when you made these answers, Mr. Witness?

WITNESS

No, sir.[122]

Second. We have carefully reviewed the testimonies of Del Rosario on April 21, 1994 and May 20, 1997, and conclude that it is Del Rosario's testimony during the hearing of April 21, 1994 which represents the truth. The transcript of stenographic notes taken during that day is replete with important details, logical and positive in character, and consistent even in light of the clarificatory questions of the trial court. Del Rosario, who was then assisted by counsel, could not have contrived his April 21, 1994 testimony where he implicated not only the appellant and Manansala but also confirmed his criminal participation in the crime charged, including his killing of Acosta. His testimony on April 21, 1994 was not made by one who had a confused mind, but by one who had a clear recollection of what he, the appellant and Manansala, had done with precision to consummate the crime they had planned so meticulously to accomplish. In contrast, the testimony of Del Rosario on May 20, 1997, made more than three years after his initial testimony, is frontally inconsistent. He claimed that his mind was confused when he testified on April 21, 1994, but in the same breath, affirmed and confirmed the truth of his answers to the questions propounded on him during the said trial.

Del Rosario claimed in his testimony during the hearing of May 20, 1997 that when he pleaded guilty to robbery with homicide, he was not assisted by counsel. However, the records show that he was, in fact, assisted by his counsel, Atty. Sofronio Untalan, Jr.[123] We find it incredible that Del Rosario would plead guilty to robbery with homicide and accept the penalty of reclusion perpetua imposed on him by the trial court if, after all, Ybasco was not robbed of P5,000. For the court to acquit the appellant of robbery with homicide simply and merely because Del Rosario made a volte face and disavowed his judicial confession on his bare claim that his mind was confused when he testified on April 21, 1994 is unacceptable. In *People v. Ubiña, et al.*, [124] we ruled that it would be a dangerous rule for courts to reject testimonies solely taken before the courts of justice simply because witnesses who had given them later on change their minds for one reason or another. Such a rule would make some trials a mockery and place the investigation of truths at the mercy of unscrupulous witnesses. All the expedients devised by men to determine the credibility of witnesses should be utilized to determine which of the contradictory testimonies represents the truth.[125] The trial court and this Court reviewed the records and have come to the same conclusion – it is Del Rosario's April 21, 1994 testimony which represents the truth.

It is true that Del Rosario was a co-conspirator and that he implicated the appellant and Manansala in the killing of Ybasco and the taking of P5,000 from the latter. However, we have ruled that the testimony of a co-conspirator may be given full probative weight if it is shown to be candid and straightforward, and is full of details which by its nature could not have been contrived, besides being corroborated by independent evidence. In *People v. Sia*, [126] we had the occasion to state:

... [I]n this regard, it must be borne in mind that the fact that a witness may have been a co-conspirator in the commission of the offense is not in itself sufficient to dilute the credibility of or, much less, be a ground to disregard altogether his testimony. Indeed:

By way of exception, the testimony of a co-conspirator may, even if uncorroborated, be sufficient as when it is shown to be sincere in itself, because given unhesitatingly and in a straightforward manner, and is full of

details which by their nature could not have been the result of deliberate afterthought.[127]

The April 21, 1994 testimony of Del Rosario is not only replete with details; it is also corroborated by independent evidence, including the medico-legal report of Dr. Joselito A. Rodrigo and his testimony that Ybasco was shot once on the right cheek,[128] the sworn statement of Mendoza, the sworn statements and testimony of Dela Rapa, as well as the results of the investigation of the police operatives.

Del Rosario's letters to the appellant dated October 8, 1997 and December 4, 1997,[129] did not weaken his testimony and enfeeble the case for the prosecution. Neither did they bolster the appellant's defenses of denial and alibi. The appellant's contention that his own brother-in-law, Del Rosario, bore a grudge against him on account of their personal differences, deserves scant consideration.

First. On cross-examination by the defense counsel on May 20, 1997, Del Rosario was asked if he bore a grudge against the appellant on account of the latter's separation from his wife, Cecille, Del Rosario's sister. Del Rosario categorically denied nurturing any grudge against the appellant:

ATTY. DE LEON

Do you know this person Ed de Jesus?

WITNESS

Yes, sir.

Q Why do you know him?

A He was a former husband of my sister, sir.

Q Is it correct to say that Ed de Jesus and your sister were already separated?

A Yes, sir, almost 17 years.

Q And because they were already separated, you took grudge against Ed de Jesus, is that correct?

A No, sir.

Q Do you have any grudge against Ed de Jesus?

A None, sir.[130]

Second. In his October 8, 1997 letter, Del Rosario claimed that the appellant was even intending to send money to him and that he, Del Rosario, was expecting some money from the appellant. Del Rosario even expressed hope that the appellant would help him first:

O cege (sic) Ed hanggang dito nalang at sana lagi kang mag-iingat diyan at ako'y umaasa na magpapadala ka dito sa akin. At siyempre alam mo na walang Bigas. walang ulam. walang gas. At walang pera. Siguro naman mas higit mo akong dapat na matulungan. Kaysa sa ibang kakosa natin dito.[131]

If, as claimed by the appellant, his brother-in-law Del Rosario falsely implicated him in the heinous crime, Del Rosario should have manifested remorse and sought forgiveness from the appellant for his perfidy. Del Rosario did not do so, and was even expecting financial help from the appellant, the very person he falsely implicated.

Third. In the Letter dated December 4, 1997, Del Rosario stated that he implicated the appellant in the robbery because of his fear that the appellant would sue his ex-wife. This was but an afterthought on the part of Del

Rosario to inveigle the appellant to send money to him. The appellant did not adduce evidence to prove that animosity existed between him and his ex-wife, or between him and Del Rosario, on account of the appellant's separation from Cecille. The appellant and his ex-wife had mutually agreed to separate more than two decades ago. In the interim, the appellant and his ex-wife had separate partners and families. The only proof the appellant offered was his bare testimony, which does not deserve credence.

The appellant's bare denial of the crime charged and his alibi are intrinsically weak defenses and cannot prevail over the positive and straightforward identification made by Del Rosario, that the appellant was one of the perpetrators of the crime charged.[132]Alibi is so easy to concoct and difficult to disprove.[133]Furthermore, the appellant's defenses of denial and alibi were debilitated by his flight after learning that he was wanted by police authorities for robbery with homicide, and his hiding in Cabuyao, Laguna on November 20, 1994, where he was arrested. The appellant managed to evade the police authorities from March 10 or 11, 1994[134] by working in Cabuyao, Laguna, and in Binangonan, Rizal,[135] while his family remained in Pampanga. We agree with the following disquisitions of the trial court:

Additionally, working against the accused Eduardo de Jesus is his "flight" from justice. After knowing that the police authorities were after him in connection with this case, he went into hiding. He was brought to Court only after he was arrested by the PNP Regional Directorate Intelligence, Camp Vicente Lim, Calamba, Laguna, on November 20, 1995. (Records, p. 195). "Flight" according to the Supreme Court, is an indication of guilt. His reason that he feared for his life has no basis.[136]

The trial court sentenced the appellant to suffer the death penalty on its finding that Ybasco was shot to death with treachery. The appellant contends that (a) the prosecution failed to prove that he shot the victim; and, (b) even if he did shoot the victim, the prosecution failed to prove that he adopted a particular means or method to do so. The Office of the Solicitor General contends that treachery was attendant because when Ybasco was shot, he was handcuffed; hence, unable to defend himself.

We agree with the trial court and the Office of the Solicitor General. The evidence on record shows that when the appellant and Manansala abducted Ybasco in Makati, they handcuffed the victim and transported him to a sugar field in Cabuyao, Laguna. The appellant and Manansala brought Ybasco out of the car. Still handcuffed, Ybasco was shot by the appellant on the right cheek. The appellant insists that it was Del Rosario who shot Ybasco. However, the identity of the conspirator who shot Ybasco and Acosta is of no moment.

In *People v. Escote, Jr.*, [137] the trial court ruled that treachery is aggravating in robbery with homicide. The aggravating circumstance of the use of a vehicle in committing robbery with homicide is also attendant in this case. The appellant and his cohorts used a vehicle when they abducted Ybasco and transported him to Cabuyao, Laguna. However, the Information does not allege that the appellant and his cohorts used a vehicle in committing the crime charged as mandated by Section 8, Rule 110 of the Revised Rules of Criminal Procedure. The rule must be applied retroactively because it is favorable to the appellant.[138] However, the additional killing is not an aggravating circumstance in robbery with homicide. This is in accordance with the ruling of this Court in *People v. Regala* [139] which is the prevailing doctrine.

The impossible penalty for robbery with homicide as amended by Rep. Act No. 7659 is reclusion perpetua to death. Considering the presence of the aggravating circumstance of treachery, and that no mitigating circumstance attended the commission of the crime, the trial court correctly sentenced the appellant to suffer the death penalty, conformably to Article 63, paragraph 1 of the Revised Penal Code.

The trial court ordered the appellant to pay P50,000 to the heirs of Ybasco and P50,000 to the heirs of Acosta as civil indemnity. It also ordered the appellant to pay to the heirs of Ybasco P500,000 as moral damages. The trial

court, however, failed to award exemplary damages. We shall, thus, modify the decision of the trial court.

The heirs of Ybasco are entitled to P75,000 as civil indemnity. Although the killing of Acosta was integrated into the single and indivisible felony of robbery with homicide, the two crimes having no separate juridical existence, nonetheless, the heirs of Acosta are entitled to civil indemnity.[140]

The heirs of Ybasco are entitled to exemplary damages in the amount of P25,000.[141] The heirs of Acosta are, likewise, entitled to P25,000 as exemplary damages. Since Dolores Ybasco, the widow of the victim, testified for the prosecution on the factual basis for moral damages, the heirs of Ybasco are entitled to, moral damages in the amount of P75,000. However, the heirs of Acosta are not entitled thereto, for failure of the prosecution to present any of the heirs of the victim to testify on the factual basis for the said damages. The appellant is obliged to return to the heirs of Ybasco the P30.00 which Del Rosario took from Ybasco before he was shot.

IN THE LIGHT OF THE FOREGOING, judgment is rendered AFFIRMING WITH MODIFICATION the Decision of the Regional Trial Court of Makati, Branch 4. The appellant Eduardo de Jesus is found GUILTY of robbery with homicide under Article 294, paragraph 1 of the Revised Penal Code, as amended by Rep. Act No. 7659, and sentenced to suffer the death penalty. The said appellant is hereby ORDERED to pay to the heirs of the victim SPO3 Eugenio Ybasco the amount of P5,030.00 as actual damages; P75,000 as civil indemnity; P75,000 as moral damages, and P25,000 as exemplary damages. The appellant is, likewise, ORDERED to pay to the heirs of Roberto Acosta P75,000 as civil indemnity and P25,000 as exemplary damages. Costs de oficio.

SO ORDERED.

Vitug, Panganiban, Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Corona, Carpio Morales, Callejo, Sr., Azcuna, and Tinga, JJ., concur.

Davide, Jr., C.J., and Puno, J., on official leave.

[1] Penned by Judge Delia H. Panganiban.

[2] Exhibit "O," Records, Vol. II, p. 37.

[3] TSN, 15 April 1994, p. 14.

[4] Id. at 13-14.

[5] Id..

[6] Id..

[7] Id.. at 5.

[8] Exhibits "M" and "C."

[9] TSN, 2 December 1994, p. 4.

[10] Id.. at 8-9.

[11] Exhibit "7."

[12] Exhibit "U-7."

[13] Exhibits "U" to "U-22."

[14] Exhibit "D."

- [15] Id.
- [16] Records, pp. 116-117.
- [17] Id.
- [18] Exhibits “A” and “B;” TSN, 15 April 1994, p. 15.
- [19] Exhibit “G.”
- [20] Exhibit “15.”
- [21] Exhibits “U” to “U-22.”
- [22] Exhibit “U-15.”
- [23] Exhibits “A” and “B.”
- [24] Exhibit “G.”
- [25] Exhibit “F-1.”
- [26] Exhibit “U-15.”
- [27] Exhibits “U-17” to “U-18.”
- [28] Exhibit “U-16.”
- [29] Exhibit “M.”
- [30] Exhibit “U-17.”
- [31] TSN, 22 August 1995, pp. 9-10.
- [32] Exhibit “A.”
- [33] Exhibit “G.”
- [34] Exhibit “F-1.”
- [35] Exhibit “M.”
- [36] Exhibit “F-2.”
- [37] Exhibits “F” to “F-4.”
- [38] Exhibit “C.”
- [39] Exhibit “M-1.”
- [40] Exhibits “F” to “F-4.”
- [41] Exhibit “M-1.”
- [42] Exhibits “C” to “C-5B.”
- [43] Exhibits “I” to “I-4.”
- [44] Records, pp. 233-234.
- [45] Exhibit “B.”

- [46] Id.
- [47] Exhibit “K.”
- [48] Exhibit “N.”
- [49] Records, Vol. I, p. 1.
- [50] Id.. at 48.
- [51] Id.. at 49.
- [52] Exhibits “U-19” to “U-22.”
- [53] Records, Vol. I, pp. 60-61.
- [54] Id.. at 69-70.
- [55] Id.. at 174-175.
- [56] Id.. at 177.
- [57] Id.. at 273.
- [58] Id.. at 289.
- [59] Id.. at 351.
- [60] Id..
- [61] Exhibits “U” to “U-22.”
- [62] Exhibit “E.”
- [63] Exhibit “G.”
- [64] Exhibit “H.”
- [65] Exhibit “I.”
- [66] Records, p. 432.
- [67] TSN, 2 December 1994, pp. 7-8.
- [68] Exhibits “1” and “2.”
- [69] TSN, 2 December 1994, pp. 55-56.
- [70] Id.. at 57-58.
- [71] Id.. at 5.
- [72] Id.. at 8-9.
- [73] Id.. at 10-11.
- [74] Id.. at 12-13.
- [75] TSN, 11 December 1997, p. 21.
- [76] TSN, 2 December 1994, pp. 48-49.

[77] Id.. at 37-39.

[78] Id.. at 39-40.

[79] Id.. at 37.

[80] TSN, 11 December 1994.

[81] Records, p. 273.

[82] TSN, 2 December 1997, p. 41.

[83] Id.. at 46-47.

[84] Exhibit “7” and submarkings.

[85] Exhibit “8.”

[86] TSN, 11 December 1997, p. 17.

[87] TSN, 15 January 1998, pp. 17-22.

[88] Id.. at 54.

[89] Exhibits “8” and “9.”

[90] TSN, 12 February 1998, pp. 5-8.

[91] Id.. at 23-25.

[92] Id. at 19-20.

[93] Id.. at 39-40.

[94] Id.. at 34.

[95] Id.. at 38.

[96] Id.. at 41.

[97] Id.. at 42.

[98] Id.. at 42-43.

[99] Rollo, p. 189.

[100] Id.. at 51-53.

[101] People v. Pedroso, 336 SCRA 163 (2000).

[102] People v. Salazar, 277 SCRA 67 (1997); People v. Abuyan, 213 SCRA 569 (1992).

[103] People v. Ponciano, 204 SCRA 627 (1991).

[104] People v. Mangulabnan, 99 Phil. 992 (1956).

[105] See People v. Puloc, 202 SCRA 179 (1991).

[106] People v. Corre, Jr., 363 SCRA 165 (2001).

[107] People v. Carrozo, 342 SCRA 600 (2000); People v. Pedroso, *supra*; People v. Verzosa, 294 SCRA 466

(1998).

[108]People v. Palijon, 343 SCRA 486 (2000).

[109]People v. Reapor, 366 SCRA 604 (2001).

[110]People v. Arapok, 347 SCRA 479 (2000).

[111] People v. Tulin, 364 SCRA 11 (2001).

[112]People v. Quinico, 365 SCRA 252 (2001).

[113]People v. Morial, 363 SCRA 96 (2001).

[114] Exhibit “U-13.”

[115]Exhibit “M.”

[116] TSN, 15 April 1994, pp. 5-7.

[117] Exhibit “G.”

[118]TSN, 21 April 1994, pp. 16-18 (emphasis ours).

[119] TSN, 20 May 1997, p. 5.

[120]Id.. at 11-12.

[121]Exhibits “U” to “U-22.”

[122]TSN, 20 May 1997, pp. 5-6.

[123] Records, p. 44.

[124] 97 Phil. 515 (1955).

[125] Cited in Reano v. Court of Appeals, 165 SCRA 525 (1988).

[126] 370 SCRA 123 (2001).

[127] Id.. at 133.

[128] Exhibit “K.”

[129] Exhibits “9” and “9-B.”

[130]TSN, 20 May 1997, pp. 7-8.

[131] Exhibit “9.”

[132] People v. Realin, 301 SCRA 495 (1999).

[133] Id.

[134] TSN, 11 December 1997, p. 3.

[135] Id.. at 6-7.

[136] Records, p. 138.

[137] 400 SCRA 603 (2003). Associate Justices Jose C. Vitug, Consuelo Ynares-Santiago and Angelina

Sandoval-Gutierrez maintain their dissenting opinion.

[138] *People v. Delim*, 396 SCRA 386 (2003).

[139] 329 SCRA 707 (2000).

[140] *People v. Catubig*, 363 SCRA 621 (2001).

[141] *Id.*

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