

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JIMMY MARQUEZ Y BACAY, ACCUSED-APPELLANT.

G.R. No. 136736. April 11, 2002

Ponente: MENDOZA, J.

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MENDOZA, J.:

This is an automatic review of the decision,[1] dated October 26, 1998, of the Regional Trial Court, Fourth Judicial Region, Branch 32, San Pablo City, finding accused-appellant guilty of the complex crime of robbery with homicide and sentencing him to suffer the penalty of death and to pay damages to the heirs of the victim Pampilo Aclan.

Accused-appellant Jimmy Marquez, together with four John Does, was charged with Robbery with Homicide under Art. 294, par. 1, in an information docketed as Criminal Case No. 10069-SP, in which it was alleged —

That on or about September 22, 1995, in the City of San Pablo, Republic of the Philippines and within the jurisdiction of this Honorable Court, the accused above-named, with intent to gain, conspiring, confederating and mutually helping one another, did then and there willfully, unlawfully and feloniously take, steal and carry away jewelries worth P2.5 million and cash of P300,000.00, Philippine Currency, belonging to one PAMPILO ACLAN, and that in furtherance of and on the occasion of said robbery to accused the taking of said items, accused with intent to kill, did then and there willfully, unlawfully and feloniously attack, assault and [shoot] Pampilo Aclan with a gun, with which the accused were then conveniently provided, thereby inflicting mortal wounds upon said offended party which caused his immediate death.

CONTRARY TO LAW.[2]

Accused-appellant was likewise charged with violation of Presidential Decree No. 1866 (Illegal Possession of Firearm and Ammunition) under a separate information docketed as Criminal Case No. 10193-SP.

When arraigned on August 29, 1996, accused-appellant entered a plea of not guilty, whereupon a joint trial of the two cases was held.

The prosecution presented four witnesses: Rizza Cervantes and Jerwin Aclan, eyewitnesses; SPO2 Rolito Alinea, the investigating policeman; and Dr. Azucena I. Bando, Assistant City Health Officer of San Pablo City, who prepared the Necropsy Report. Their testimonies are as follows:

The victim, Pampilo Aclan,[3] was a businessman engaged in the buying and selling of jewelry, for which he had a store in the market of San Pablo City. Before leaving for home at around 5:00 p.m. on September 22, 1995, Aclan placed the jewelry in two (2) boxes. Then, with his son Jerwin[4] and salesgirl Rizza Cervantes, he went home carrying the two boxes and a shoulder bag containing cash. The three took a tricycle driven by Jimmy Soriso.[5] Aclan, who held the two boxes, occupied the main seat inside the tricycle, while Rizza sat on the small seat to the left of the main seat. Jerwin took a seat behind Jimmy. As the tricycle was negotiating a curve near the entrance to their residence in Francisco Terrace, it was blocked by five armed men, who ordered the driver to

stop. Stating that it was a hold-up, accused-appellant pointed his gun at Aclan and demanded that he hand over the bag. When Aclan refused to part with the bag, one of the hold-uppers grabbed it, and a struggle ensued.[6]

Rizza tried to help the victim keep the bag, but one of the hold-uppers pushed her inside the tricycle and succeeded in getting the bag. When the victim tried to run after the hold-upper, accused-appellant shot him. The victim fell to the ground, and the hold-uppers fled with the bag and the two boxes on board the tricycle.[7]

Jerwin Aclan testified that a hold-upper poked a fan knife (balisong) at his back. When his attacker was distracted, he punched him, but in the course of the fight he was stabbed on the right arm. Jerwin said he ran to the nearest store, leaving his father and one of the hold-uppers fighting for the possession of the bag. Then a shot rang out. When he turned around, Jerwin said he saw accused-appellant with his gun, standing over the fallen body of his father. Accused-appellant then fled on board the tricycle with his companions, carrying with them the two boxes containing the jewelry and his father's bag. Jerwin rushed to his father and, with the help of his elder brother Jomar, took him to the hospital. However, Pampilo Aclan died shortly after.[8]

SPO2 Rolito Alinea, leader of the investigating team, testified that accused-appellant was apprehended in Batangas City and taken to the Batangas City Provincial Command where he was identified by both Rizza Cervantes and Jerwin Aclan from a police line-up, consisting of accused-appellant and four civilian employees.[9]

Dr. Azucena I. Bandy prepared a Necropsy Report (Exh. B) with the following findings:

A fairly developed male cadaver measuring 162 cm. in length in rigor mortis condition over dependent portion of the body with wound described as:

Gunshot wound - thru and thru with the point of entrance measuring 1 x 1 cm. lateral surface neck left directed infero-anteriorward to the right and posteriorward to the right lacerating the jugular vessels and thoracic aorta with the point of exit measuring 1.5 x 1.5 suprascapular region right.

CAUSE OF DEATH: SHOCK AND HEMORRHAGE DUE TO GUNSHOT WOUND INVOLVING THE JUGULAR VESSELS AND THORACIC AORTA.

Dr. Bandy later explained her findings,[10] thus —

DIRECT EXAMINATION BY PROSECUTOR SUNEGA:

Q

I am showing Exhibit B to you, and please inform the Court in layman's language as appearing in the necropsy report?

A

The wound inflicted was [a] gun shot wound and this is located at the left side of the neck and goes to the right and lacerates the vessel which was the point of exit.

Q

Do you recall having drawn an anatomical sketch to show the location of the wound you just described?

A

I have with me the anatomical sketch.

Q

Now in this anatomical sketch, did you indicate which wound was that you just described?

A

The point of entry goes to the right and turn to the point of exit which is the back, which is the right scapular area. (witness pointing to the left side of the neck of the sketch)

Q

May we have the anatomical sketch marked as Exhibit "C"; and the point of entry as indicated by the witness to be marked as Exhibit C-1; the point of exit as Exhibit C-2. Can you describe the point of exit with respect to the part of the body at the back?

A

Scapular area is the point of exit.

Q

Your finding as to the cause of death is shock and hemorrhage due to gunshot wound involving the jugular vessel [and thoracic aorta], by that do we mean Dra. the jugular vessel as well as [thoracic aorta] were [traversed] by the bullet?

A

Yes, sir.

CROSS-EXAMINATION BY ATTY. BELARMINO:

Q

I am showing to you Exhibit C, do we understand from your testimony that the entrance of the bullet is located at the portion of the body which is the left neck?

A

Yes, sir.

Q

And the exit of the bullet proceeded at the back lower portion right side of the body of the deceased, is that correct?

A

Yes, sir.

Q

So much so your confirmation that the entrance of the bullet is higher in trajectory than the exit?

A

Yes, sir.

Q

Could you say Dra. that the position of the assailant is of the higher lane than the position of the deceased when he was shot?

A

The assailant may be taller than the victim.

Q

And the portion of the entrance [was] on the left side would say with confirmation they [were] not face to face? May we [move] that the tagalog answer be placed on the record.

COURT:

Place it on record.

Answer of the witness

A

Nakatagilid.

ATTY. BELARMINO:

Q

In other words the assailant's position was on the left side of the deceased?

A

Yes, sir.

Q

Could you say that the victim was [seated] at the time he was shot by the assailant, who was then standing?

A

Probably.

The parties stipulated, subject to the sound discretion of the Court, that the pieces of jewelry and the cash stolen from the victim were worth P2.5 million.[11]

Accused-appellant Jimmy Marquez's defense was alibi. On September 18, 1995, he said he went to his brother Arcadio Marquez's house in Taguig, Metro Manila to borrow money because he needed capital in buying and selling of fruits. Arcadio allegedly told him that the money would come from his wife's salary which would be paid on September 24, 1995 yet. Accused-appellant, therefore, decided to stay and in the meantime help his brother in the construction of a septic tank. Jimmy Marquez stayed in his brother's house from September 18 to September 25, 1995.[12] After receiving the money from his brother, accused-appellant said he left for Mabini, Batangas.

To reinforce his alibi, accused-appellant claimed that while in Taguig on September 22, 1995, the date of the crime in question, he in fact participated in the settlement of a case between the spouses Marayan. Although he was not a member of the Barangay Council, accused-appellant said he acted as one of the witnesses in the settlement.[13]

Barangay officials and other individuals who, together with accused-appellant, claimed to have participated in the settlement of dispute in their barangay corroborated accused-appellant's alibi. Cesar Gobrin, purok leader and member of the Lupong Tagapamayapa of Western Bicutan, Taguig, and Clemente de Latade testified that accused-appellant was present during the signing of the settlement between the Marayan spouses. In fact, he said accused-appellant was the only person who was not a member of the team in their place who signed as a witness to the document. However, Gobrin admitted that there was no logbook where settlements are entered but only a compilation of the same.[14] On the other hand, Mariano Aclan testified that accused-appellant talked to him on October 26, 1997 and asked him to testify that accused-appellant was in Taguig on September 25, 1995. Mariano Aclan said he saw the document, which he signed, only when he was brought to Court when he attended the hearing prior to the one wherein he gave his testimony.[15]

Rodolfo Guiyab, barangay chairman of Western Bicutan, Taguig, testified that the alleged document of settlement in the case in which accused-appellant allegedly acted as a witness, was submitted to him unsigned by the secretary, Jesus Sarcilla. From September 22, 1995 up to the time he testified, Guiyab said he never checked his office files to see if such a document had been filed in the office.[16]

Jesus Sarcilla, the barangay secretary, identified a document as the document of settlement between the Marayan spouses. He said the document was executed by the parties on September 26, 1995 and that he signed it. He gave a photocopy of the document to accused-appellant's brother upon the latter's request. However, Sarcilla could not vouch for the integrity of the document as he could not recall when he parted with the original copy of the subject document nor the person to whom he gave it.[17]

Arcadio Marquez, accused-appellant's elder brother, also testified to corroborate accused-appellant's alibi. He confirmed accused-appellant's testimony regarding his participation in the repair of the septic tank and in the settlement of a case in their barangay between a couple as well as on the alleged physical abuse of his brother by the Batangas City police.[18] He explained that although, to his knowledge, other cases for frustrated homicide had been filed against his brother by Luisito Dueñas in Sariaya, Quezon and for murder by Virgilio Zaballero in Lucena City, the cases had been dismissed either because of desistance or because of failure of the complainant to appear at the trial.[19]

Atty. Mario Panganiban testified that he was the lawyer who assisted the accused-appellant while the latter was

detained at the PNP office in Batangas City. He claimed that accused-appellant had complained of having been maltreated by the policemen, although the accused-appellant did not name those who had maltreated him. Atty. Panganiban said that although he told accused-appellant to see a physician for a physical examination, he did not know whether this was done by accused-appellant.[20]

After trial, judgment was rendered finding accused-appellant guilty of robbery with homicide in Criminal Case No. 10069-SP but acquitting him of the charge of violation of P.D. No. 1866 in Criminal Case No. 10193-SP. The dispositive portion of the trial court's decision reads:

WHEREFORE, in view of the foregoing considerations, the court finds the accused JIMMY MARQUEZ y BACAY guilty beyond reasonable doubt of the crime of Robbery with Homicide defined and penalized under Article 294, par. 5, and Article 249 of the Revised Penal Code and he is hereby sentenced the supreme and capital penalty of DEATH, with costs.

He is further sentenced to pay the heirs of the deceased:

(a)

The sum of P50,00.00 as death indemnity;

(b)

The sum of P2 million representing stolen cash and the cost of the pieces of jewelry;

(c)

The sum of P250,000.00 as moral and exemplary damages; and

(d)

The sum of P80,000.00 representing burial and other expenses of the victim.

For failure of the prosecution to establish the guilt of the accused in Crim. Case No. 10193-SP for Illegal Possession of Firearm and Ammunition, above-named accused JIMMY MARQUEZ Y BACAY is pronounced ACQUITTED, without costs.

As the four (4) John Does have not been identified as of this time, the prosecution arm is hereby ordered to take extra effort in bringing to the bar of justice the said four (4) suspects to be dealt with accordingly.

SO ORDERED.[21]

Accused-appellant assigns the following errors allegedly committed by the trial court:

- THE LOWER COURT ERRED IN FINDING THE ACCUSED GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF ROBBERY WITH HOMICIDE AND SENTENCING HIM TO THE PENALTY OF DEATH.

- THE LOWER COURT ERRED IN RELYING ON THE UNRELIABLE TESTIMONY OF TWO (2) BIASED WITNESSES.

As a preliminary matter, accused-appellant says that the use of DNA testing would prove his innocence. The fact, however, is that there was no DNA test to prove accused-appellant's innocence.[22]

On the other hand, the evidence on record fully supports the trial court's judgment of conviction. A conviction for robbery with homicide requires proof of the following elements: (a) the taking of personal property with violence or intimidation against persons or with force upon things; (b) the property taken belongs to another; (c) the taking

be done with *animus lucrandi* (intent to gain); and (d) on the occasion of the robbery or by reason thereof, homicide in its generic sense was committed. The offense becomes the special complex crime of robbery with homicide under Art. 294 (1) of Revised Penal Code if the victim is killed on the occasion or by reason of the robbery.

Accused-appellant sought to discredit the testimonies of the prosecution witnesses Rizza Cervantes, salesgirl of the victim, and Jerwin Aclan, the victim's son, and by offering denial and alibi as defense.

Accused-appellant's claims are unconvincing. In challenging the finding of the trial court as to the credibility of the prosecution's witnesses, the burden is on the accused to show that the testimonies are untrustworthy. This Court has consistently ruled that in the absence of any fact or circumstance of weight and influence which has been overlooked or the significance of which has been misconstrued by the trial court, appellate courts will not set aside the evaluation of the evidence made by the trial court considering that it has heard the witnesses and observed their deportment during the trial.[23] In this case, there is no showing that the trial court overlooked substantial facts so as to justify this Court in setting aside the evaluation of the evidence made by the trial court.

Indeed, prosecution witnesses positively and categorically identified accused-appellant as one of the five armed men who held them up on September 22, 1995 and killed the victim. Rizza Cervantes testified as follows:

Q:

Alright, you claimed that you were [held-up] when you were on board the tricycle, please tell the Court what transpired on that particular date and time when you were [held-up] while on board a tricycle?

A:

We were about to go home and we were [held-up] at San Francisco Terrace by five (5) persons and I recognized only one among them, sir.

....

ATTY. MALVEDA:

....

Q:

You said a while ago that you could identify that person who poked a gun and who shot Kuya Pilo when you were inside the tricycle, if that person is around, can you identify and point to him?

A:

Yes, sir.

Q:

Please identify that person?

A:

(Witness pointed to a person who gave his name as Jimmy Marquez.)[24]

Jerwin Aclan testified as follows:

Q:

Alright, that person whom you had seen right after you heard the shot while still poking the gun [at] your father, will you be able to recognize him, Mr. Witness?

A:

Yes, sir.

Q:

If that person whom you saw immediately after you heard the shot poking a gun still to your father is inside the courtroom, will you be able to recognize him?

A:

Yes, sir.

Q:

Please look around this courtroom and point to that person if that person whom you saw immediately after you heard the shot still poking a gun [at] your father at the time that your father was shot on September 22, 1996 is around, please point to him now[.]

A:

That person, sir.

Q:

What is your name?

A:

[Witness pointed to a person who gave his name Jimmy Marquez.][25]

There was no possibility of mistaken identification because accused-appellant and his companions were not wearing masks,[26] and the prosecution witnesses and accused-appellant and his companions were face to face of each other, when the latter carried out their evil plan.

SPO2 Rolito Alinea, who conducted the investigation of the case, testified:

Q:

I noticed that in [their] statements both witnesses Rizza Cervantes and Jerwin Aclan were able to identify accused Jimmy Marquez, will you please inform the Court how both witnesses were able to identify the accused Jimmy Marquez?

....

A:

These two witnesses were both in front of [the] police line up including the accused, [and the [witness[es] pointed to accused Jimmy Marquez.

Q:

How many persons were there in the police line up?

A:

Five (5), sir.

Q:

Tell us how Rizza Cervantes identified Marquez?

A:

When I asked Rizza Cervantes who among those five (5) persons in the line up is the one to be considered as one of the suspect[s], she pointed to Jimmy Marquez.

Q:

How about Jerwin Aclan, how did he identif[y] Marquez?

A:

He also pointed to the same police line up and he pointed Jimmy Marquez as one of those who killed Pampilo Aclan.[27]

Accused-appellant claims that Rizza Cervantes, as employee of the victim, and Jerwin Aclan, as the victim's son, were naturally biased against him and, therefore, their testimonies should not be given credence. The same argument, however, could be made against accused-appellant's own brother, Arcadio Marquez, who testified to corroborate accused-appellant's alibi. Yet accused-appellant does not say his brother's testimony should not be given weight.

Indeed, the relationship per se of the prosecution witnesses to the victim does not give rise to a presumption of bias nor does it ipso facto impair their credibility.[28] There is no legal provision which disqualifies relatives of the victim of a crime from testifying, if they are competent.[29] On the contrary, a relative like Jerwin Aclan

should be considered especially qualified because he has an interest in securing the conviction of those who are truly guilty.[30] What will it profit him if the one convicted is innocent?

Indeed, in the absence of proof that a witness is moved by improper motive, it is presumed that he was not so moved and, therefore, his testimony is entitled to full faith and credit.[31] That presumption has not been overcome in this case, thus Jerwin's identification of accused-appellant as the killer of his father stands. It should also be stressed that the motive for the killing is not important when there is no doubt as to the identity of the perpetrators of the crime.[32] Here, however, the motive is plain: the victim was killed to rob him of his jewelry and his money.

Accused-appellant likewise contends that the mention of the mole on his chin as an identifying mark during the trial of the case was an afterthought since no such mention was made when the prosecution eyewitnesses identified him in the police line-up. As the Solicitor-General contends, however —

The mole on the chin is just one of appellant's distinctive features. It is not constitutive of his physical appearance. What is significant is that appellant was positively and categorically identified by the prosecution witnesses as the gunwielder. Appellant need not be described in every detail. The main substance of the testimony of Rizza Cervantes and Jerwin Aclan that they saw accused-appellant shoot the victim remains untouched and unaffected.[33]

Accused-appellant also questions the prosecution's non-presentation of Jimmy Soriso, the tricycle driver. He contends that this must be because his testimony would be adverse if produced. The prosecution evidence, however, was more than sufficient to establish the guilt of the accused-appellant beyond reasonable doubt. Suffice it to say, the question is not one of number, but of the quality of the testimonies offered.

In truth, it is the testimonies of the defense witnesses, despite their number, that the Court finds not credible. Most of them merely repeated in court what they had been instructed by Arcadio Marquez, accused-appellant's brother. This is fairly evident from the following testimonies of the defense witnesses:

Testimony of Cesar Gobrin:

Q:

Did you receive any subpoena to testify before this Court today?

A:

None, sir, I was only told to testify that "bilang alagad ng batas dapat [kong] harapin ang usapin."

Q:

Who informed you that you are going to testify today?

A:

It was Arcadio Marquez who told me.

. . . .

Q:

And that you are going to testify in favor of his brother?

A:

Yes, sir.

Q:

And that you discussed the things that you are going to testify before this Court?

A:

Yes, sir.

Q:

And what was discussed and told you by Arcadio Marquez w[as] the very same thing that you mentioned before this Court?

A:

Yes, sir.

....

Q:

You were told by Arcadio Marquez to testify in Court and [inform] the Court that his brother was present in your Purok on September 22, 1995?

A:

Because of that case.

Q:

So when you came to this Court, you centered your mind that you are going to testify that Marquez was present in your Purok on September 22, 1995?

A:

Yes, your Honor.

Q:

Where was he on September 22, 1995?

A:

In the house of his brother because he was doing something there.

Q:

Were you present in their house?

A:

I was not there.

Q:

You were only told?

A:

I was only told by my [auxiliaries].

Q:

On September 18, 1995, where was Jimmy Marquez?

A:

Probably in their house.

Q:

Where?

A:

In the house of his brother.

Q:

Did you see him there?

A:

I presumed.

Q:

You presumed because you did not actually see him in the house of Arcadio Marquez?

A:

No.[34]

Testimony of Clemente de Latade:

Q:

You did not receive any subpoena to testify today, Mr. Witness?

A:

None, sir.

Q:

When for the first time did you come to know that you will testify today?

A:

Last night, sir.

Q:

Who informed that you will testify today?

A:

Arcadio Marquez, sir.

Q:

And he told you what to tell to this Court last night?

A:

About the incident he told me, sir.

. . . .

Q:

And because of that information told to you by Arcadio Marquez last night that was the very same thing you will testify to this Court on direct examination?

A:

Yes, sir.

Q:

In fact, your transportation fare was paid by Arcadio Marquez from Taguig in coming here and return back?

A:

Yes, sir.

Q:

And that you were instructed that you will only tell what he told you last night?

A:

Yes, sir.[35]

Testimony of Rodolfo Guiyab:

Q:

Why did you come to this Court wherein you don't know of what you will testify?

A:

I just received a subpoena that I will testify today, sir.

....

Q:

You have read the word, Jimmy Marquez, this caption?

A:

Yes, sir.

Q:

When did you read this?

A:

Only yesterday, sir.

Q:

What time?

A:

4:00 o'clock in the afternoon, sir.

Q:

Do you know . . . Jimmy Marquez?

A:

I don't know him, sir.

Q:

You never inquired from anybody . . . who was that Jimmy Marquez?

A:

I also asked, sir, I asked the Chief of the Tanod if he knew Jimmy Marquez and he told me, he does not know, sir.

Q:

It is now clear that you don't know any person by the name of Jimmy Marquez?

A:

No, sir.

COURT:

Q:

He is not the one of the constituents in your barangay?

A:

No, he is not, Your Honor.[36]

Testimony of Mariano Aclan:

Q:

Did you receive any subpoena to appear in today's hearing, Mr. Witness?

A:

None, sir.

Q:

How did you come to know that you are to appear before this Court?

A:

I had a talk with the brother of Marquez, sir.

COURT:

Q:

You are referring to Arcadio?

A:

Yes, sir.

ATTY. MALVEDA:

Q:

And you claim to have talked last Tuesday?

A:

Last Sunday, sir.

Q:

That was October 26, 1997?

A:

Yes, sir.

Q:

Before that date were you able to have a talk with Arcadio Marquez?

A:

Only today, sir, this morning.

Q:

And what was told to you by Arcadio Marquez?

A:

We talked about the incident, sir, that I am needed.

Q:

So Arcadio Marquez told you as to what will be the subject of your testimony in court today?

A:

None, sir.

Q:

So you never [talked] of any subject matter that you are going to testify in today's hearing?

A:

Marquez told me about the problem of his brother, sir. He told me to testify today that his brother was in Taguig.

Q:

That is exactly the statement told you by Arcadio Marquez?

A:

Yes, sir.

Q:

Other than that statement there were no other matters told you by Arcadio Marquez?

A:

None, sir.

COURT:

Q:

Who is that brother whom you are going to show that he was in Taguig?

A:

I forgot the name because he was not residing there, Your Honor.

Q:

You do not know his name?

A:

Because I have many works and I will testify that he was there, Your Honor.

....

Q:

Before you testified, let us say, from October 27 up to November 3, 1995, did you come to see the document which according to you signed?

A:

Yes, sir.

Q:

Where did you see that?

A:

When we brought that document during the last hearing.

Q:

You were already here during the last hearing before today?

A:

Yes, Your Honor.

Q:

Notwithstanding the fact that you did not receive any subpoena you were present during the last hearing of this case?

A:

Yes, sir.

Q:

And notwithstanding that statement of yours you will still claim before this Court that it was only on October

27 that Arcadio Marquez talked to you about the statement that you are going to testify before this Court?

A:

He informed me when I will come to this Court, sir.

Q:

So do you wish to tell the Court that this Kasunduan ng Pag-aayos was with Mr. Arcadio Marquez on October 27, 1997?

A:

I just saw this document here, sir.

Q:

Who showed to you this document, was it Arcadio Marquez?

A:

Yes, sir.

Q:

It was here in Court that Arcadio Marquez presented to you this document?

A:

Outside, sir.

Q:

So he had a copy of his own?

A:

I do not know, Your Honor.

Q:

Is this exactly the document showed to you by Arcadio Marquez?

A:

Yes, sir.

Q:

So that this was in possession Arcadio Marquez from Taguig up to San Pablo City?

A:

I only saw this document outside, sir.

Q:

And only the two of you were there at the place where it was showed to you?

A:

Yes, sir.

Q:

No other person present?

A:

None, sir.

Q:

What is the content of that document?

A:

Considering that I do now know how to read, Your Honor, it was read to me and then I signed.[37]

Moreover, alibi as a defense cannot prevail over the positive identification of accused-appellant. It is inherently weak. Denials and alibis, unsubstantiated by clear and convincing evidence, as in this case, are negative and self-serving, and cannot be given greater evidentiary weight over the positive testimonies of credible witnesses.[38] It has been held that where an accused's alibi is only confirmed by close relatives, who induced others to testify on something they knew nothing about, such denial deserves scant consideration, especially in the face of affirmative testimonies of credible prosecution witnesses as to his presence in the crime scene.[39]

The foregoing finding notwithstanding, we think the penalty of death imposed by the trial court should be modified. Art. 294, paragraph 1 of the Revised Penal Code provides that "[t]he penalty of reclusion perpetua to death, where by reason or on occasion of the robbery, the crime of homicide shall have been committed. . ." shall be imposed. In this case, in sentencing accused-appellant to death for the crime of robbery with homicide, the trial court took into account the aggravating circumstance of commission of the crime by a band and/or armed malefactors. However, this circumstance was not alleged in the information filed against accused-appellant. Rule 110, §8 of the Revised Rules of Criminal Procedure (effective December 1, 2000), now provides:

Designation of the offense. -- The complaint or information shall state the designation of the offense given by the statute, aver the acts or omission 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. (Emphasis added)

This provision must be applied to this case being favorable to accused-appellant. Moreover, it has been held that if the appreciation of an aggravating circumstance would raise the imposable penalty to death, the circumstance

must be alleged in the information.[40] As no aggravating circumstance is alleged in the information in this case, the penalty should be reduced to reclusion perpetua.

The Court affirms the awards of P50,000.00 as civil indemnity for the death of the victim, the same being in line with prevailing jurisprudence,[41] and of P80,000.00, representing burial and other incidental expenses, as stipulated by the parties. On the other hand, considering that the parties' stipulation that the value of the stolen cash and jewelry was P2.5 million is "subject to the . . . court's sound discretion" and taking into account the factual circumstances of this case, the Court deems it appropriate to reduce the amount for the restitution of the stolen cash and jewelry to P1 million. Similarly, as there is no uniform amount for the award of moral damages in cases for robbery with homicide but, considering the circumstances of this case as already discussed, the amount awarded to the heirs of Pampilo Aclan should be reduced to P50,000.00.[42] In accordance with *People v. Catubig*,[43] exemplary damages may be awarded to the offended party pursuant to Art. 2230 of the Civil Code if there is an aggravating circumstance, whether ordinary or qualifying. An award of P25,000.00 as exemplary damages is proper.

WHEREFORE, the decision of the Regional Trial Court, Fourth Judicial Region, Branch 32, San Pablo City, dated October 26, 1998, is **AFFIRMED** with the modification that accused-appellant is sentenced to suffer the penalty of reclusion perpetua and ordered to pay the heirs of Pampilo Aclan the amounts of P50,000.00 as civil indemnity, P100,000.00 as moral damages, P80,000.00 as burial and other incidental expenses, P25,000.00 as exemplary damages and P1,000,000.00 as restitution for the stolen cash and jewelry.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Melo, Puno, Vitug, Kapunan, Panganiban, Quisumbing, Ynares-Santiago, De Leon, Jr., Sandoval-Gutierrez, and Carpio, JJ., concur.

[1] Per Judge Zorayda Herradura-Salcedo.

[2] Rollo, p. 6.

[3] Also referred to as Pamfilo Aclan, or "Kuya Pilo" in the records.

[4] Also referred to as Gerwin Aclan in the records.

[5] Also referred to as Jaime Zorizo in the records.

[6] TSN (Rizza Cervantes), pp. 3-10, 13-18, Sept. 9, 1996; TSN, pp. 6-11, 17-18, Oct. 3, 1996; TSN, (Jerwin Aclan), pp. 7-13, Feb. 4, 1997.

[7] TSN (Rizza Cervantes), pp. 20-26, Oct. 3, 1996; TSN (Jerwin Aclan), pp. 14, 36-39, Feb. 4, 1997.

[8] TSN (Jerwin Aclan), pp. 15-17, 23-24, 28-30, Feb. 4, 1997.

[9] TSN (SPO2 Rolito Alinea), pp. 3-6, Feb. 11, 1996.

[10] TSN (Dr. Azucena Bando), pp. 4, 6, Dec. 2, 1996.

[11] Decision, p. 22, Rollo, p. 42; Order, March 12, 1997, Records, p. 64.

[12] TSN (Jimmy Marquez), pp. 11-13, Jan. 13, 1998; TSN (Arcadio Marquez), pp. 11-12, Aug. 6, 1997.

[13] TSN (Arcadio Marquez), p.5, Aug. 18, 1997; Exh. 4.

- [14] TSN (Cesar Gobrin), pp. 20-22, 24-25, 27, Sept. 15, 1997; TSN (Clemente de Latade), pp. 4-13, Oct. 13, 1997.
- [15] TSN (Mariano Aclan), pp. 3-11, Nov. 3, 1997.
- [16] TSN (Rodolfo Guiyab), pp. 15-17, 26-27, Oct. 13, 1997.
- [17] TSN (Jesus Sarcilla), pp. 3-5, 8-10, Jan. 13, 1998.
- [18] TSN (Arcadio Marquez), pp. 9-10, Aug. 6, 1997; p. 14, Oct. 15, 1997.
- [19] TSN (Arcadio Marquez), pp. 3-4, 6-7, Aug. 18, 1997; pp. 6-9, Sept. 15, 1997.
- [20] TSN (Atty. Mario Panganiban), pp. 13-16, Nov. 3, 1997.
- [21] Decision, p. 22-23, Records, p. 155-156. “Article 294, par. 5” in the first paragraph of the dispositive portion should read as “Article 294, par. 1”.
- [22] DNA test is synonymous to DNA typing, DNA fingerprinting, DNA profiling, genetic tests, and genetic fingerprinting. The scientific basis of this test comes first from the fact that our differences as individuals are due to the differences in the composition of our genes. These genes comprise a chemical substance, DNA or deoxyribonucleic acid. In the United States, DNA tests have been used to convict perpetrators of crime, as well as exonerate innocent individuals. S. C. Halos, Current trends in DNA typing and applications in the judicial system, (3rd Convention and seminar of the Philippine Judges Association, June 11, 1999), 4 The Court Systems Journal 47 (1999).
- [23] Madrid v. Court of Appeals, 332 SCRA 570 (2000); People v. Durado, 321 SCRA 498 (1999); People v. Culala, 316 SCRA 582 (1999); People v. Rabang, Jr., 315 SCRA 951 (1999); People v. Pelen, 313 SCRA 683 (1999).
- [24] TSN (Rizza Cervantes), pp. 5, 8-9, Sept. 9, 1996.
- [25] TSN (Jerwin Aclan), pp. 19-20, Feb. 4, 1997.
- [26] TSN (Rizza Cervantes), p. 16, Oct. 3, 1996; TSN (Jerwin Aclan), p. 31, Feb. 4, 1997.
- [27] TSN (SPO2 Rolito Alinea), pp. 5-6, Feb. 11, 1997.
- [28] People v. Maramara, 317 SCRA 222, (1999); People v. Macuha, 310 SCRA 14 (1999); People v. Fabrigas, Jr., 261 SCRA 436 (1996); People v. Sinatao, 249 SCRA 554 (1995); People v. Francisco, 249 SCRA 526 (1995).
- [29] People v. Fabrigas, Jr., *supra*.
- [30] People v. Oposculo, 345 SCRA 167(2000); People v. Macuha, *supra*; People v. Villalobos, 209 SCRA 304 (1992).
- [31] People v. Celis, 317 SCRA 79 (1999); People v. Lopez, 249 SCRA 610 (1995).
- [32] People v. Tan, 315 SCRA 375 (1999).
- [33] Appellee’s Brief, pp. 28-29.
- [34] TSN (Cesar Gobrin), pp. 22, 24-25, Sept. 15, 1997.
- [35] TSN (Clemente de Latade), pp. 10-11, 12, Oct. 13, 1997.
- [36] TSN (Rodolfo Guiyab), pp. 17, 20-21, Oct. 13, 1997.

[37] TSN (Mariano Aclan), pp. 4-6, 8-11, Nov. 3, 1997.

[38] *People v. Mores*, 311 SCRA 342 (1999).

[39] *People v. Ocumen*, 319 SCRA 539 (1999).

[40] *People v. Gallego*, 338 SCRA 21, 43-44 (2000).

[41] *People v. Verde*, 302 SCRA 690 (1999).

[42] See *People v. Piandong*, 268 SCRA 555 (1997).

[43] G.R. No. 137842, August 23, 2001, cited in *People v. Escaño*, G.R. No. 140218-23, Feb. 12, 2002.

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