THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. PEDRO FRANCISCO Y ADRIANO, ROMEO ROMERO Y ASIADO, AND SALVADOR GREGORIO (AT LARGE), ACCUSED, ROMEO ROMERO Y ASIADO, ACCUSE...

G.R. No. 138022. August 23, 2001

Ponente: MENDOZA, J.

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MENDOZA, J.:

This is an appeal from the decision[1] of the Regional Trial Court, Branch 100, Quezon City, finding accused-appellant guilty of the complex crime of robbery with homicide and sentencing him to suffer the penalty of reclusion perpetua and to pay damages.

Accused-appellant was charged, together with Pedro Francisco and Salvador Gregorio, with robbery with homicide under Art. 294, par. 1 of the Revised Penal Code. The amended information alleged —

> That on or about the 15[th] day of October, 1991 in Quezon City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring together, confederating with and mutually helping one another, with intent to gain and by means of violence and intimidation against person, did then and there, willfully, unlawfully and feloniously rob the residence of PING YAN LUEY y CRUZ located at No. 41 Cristine Street, Parkway Village, Barangay Apolonio Samson, this City, in the following manner, to wit: on the date and place aforementioned, accused pursuant to their conspiracy, barged into the residence of said PING YAN LUEY y CRUZ and with [an] ice-pick pointed to PURITA LUEY y SANTOS, hogtied her and thereafter robbed, took and carried away the following, to wit:
>
> One (1) Sony Betamax and Adaptor
>
> P10,000
>
> One (1) Lady's gold ring with diamonds
>
> 10,000
>
> One (1) pair of white gold earrings
>
> 5,000
>
> Two (2) gold lady's bracelet
>
> 10,000
>
> One (1) lady's necklace with heart shaped pendant
>
> 30,000
>
> One (1) pearl necklace

10,000

TOTAL

P 75,000

All in the total amount of P75,000.00 and cash money of undetermined amount (Philippine currency and U.S. dollar), and on the occasion of said robbery, accused with intent to kill and without any justifiable cause, stabbed said PURITA LUEY y SANTOS in the different parts of her body, thereby inflicting upon her serious and mortal wounds which were the direct and immediate cause of her death, to the damage and prejudice of the heirs of said PURITA LUEY y SANTOS in such amount as may be awarded to them and to said PING YAN LUEY y CRUZ in the aforementioned amount and in such other amount as may be awarded to him under the provisions of law.

Contrary to law.[2]

In the beginning, only Pedro Francisco was apprehended. Upon being arraigned on January 16, 1992, he pleaded not guilty. Romeo Romero was apprehended two years later. Upon being arraigned on August 12, 1994, he too entered a plea of not guilty to the crime charged. Thereupon trial was held. Accused Salvador Gregorio has remained at large to this date.

After the initial stage of the trial, Pedro Francisco changed his plea from not guilty to guilty to the lesser offense of robbery with physical injuries, of which he was convicted on July 16, 1997.

The prosecution presented six witnesses, whose testimonies are as follows:

Carlos Obal, first cousin of the victim Purita Santos Luey, testified that on October 15, 1991, at about 8 o'clock in the morning, he went to the victim's residence where he worked as a gardener. As he was about to enter the gate, he saw three men, whom he identified as Pedro Francisco, Romeo Romero, and Salvador Gregorio, hurriedly coming out of the house, each one carrying a bag.[3] Obal knew Francisco whom he in fact had recommended to the Lueys as a construction worker. As for accused-appellant Romeo Romero, Obal recognized him, having previously seen him in Francisco's house at Kaingin Road, Balintawak, where the two were neighbors.[4]

Carlos Obal testified that when he entered the house of the Lueys, he found his cousin Purita Santos Luey dead. The victim's hands and feet were bound by a telephone cord. Her body bore signs of multiple stab wounds. Obal went out of the house and tried to contact the victim's husband, but failed to reach him. Obal was able to contact the victim's brother-in-law.[5]

Investigating Officer SPO2 Rodrigo Mendez testified that on October 15, 1991, he was on duty at the Philippine National Police (PNP) Station 1 in La Loma, Quezon City. He received a report of a killing at No. 41 Christine Street, Parkway Village, Barangay Apolonio Samson, Quezon City. When he and his companions went to the place, there were already several people inside the house, including some barangay officials. He found the lifeless body of Purita Santos Luey lying in a pool of blood. There was a trail of blood from the dining room to the living room where the victim's body was found.[6] The victim's neck was tied with a telephone wire, while her hands were tied to the window grill.[7] The room had been ransacked, with some of the drawers forcibly opened. The house was in complete disarray. The police recovered two improvised ice pick scabbards, one on top of the refrigerator and the other on the table near the kitchen.[8]

The victim's husband, Ping Yan Luey, testified that he arrived home later in the morning of October 15, 1991.[9] He discovered his Sony Betamax and adaptor, several pieces of jewelry belonging to his wife, and sums of money (both in Philippine and United States currencies) to be missing. He presented official receipts (Exhs. H to J) showing the actual expenses he incurred for the funeral and burial of his deceased wife. The total amount of the

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valuables and cash allegedly missing in the house of the Lueys was estimated to be P75,000.00.[10]

Dr. Dario Gajardo performed an autopsy on the body of Purita Santos Luey on October 20, 1991. His report (Exh. C) is as follows:

> FINDINGS:
>
> Fairly developed, fairly nourished female cadaver in rigor mortis with postmortem lividity over the dependent portions of the body. Conjunctive are pale. Lips and nailbeds are cyanotic.
>
> HEAD, TRUNK AND UPPER EXTREMITIES:
>
> (1) Stab wound, neck, measuring 0.6 by 0.3 cm, along the anterior midline.
>
> (2) Stab wound, neck, measuring 0.5 by 0.3 cm, 4 cm left of the anterior midline.
>
> (3) Stab wound, left infraclavicular region, measuring 0.5 by 0.3 cm, 7.5 cm from the anterior midline.
>
> (4) Stab wound, left infraclavicular region, measuring 0.5 by 0.3 cm, 10 cm from the anterior midline.
>
> (5) Stab wound, left infraclavicular region, measuring 0.6 by 0.3 cm, 14 cm from the anterior midline.
>
> (6) Stab wound, chest, measuring 0.7 by 0.3 cm, 10 cm left of the anterior midline.
>
> (7) Stab wound, chest, measuring 0.8 by 0.3 cm, 4 cm left of the anterior midline.
>
> (8) Stab wound, sternal region, measuring 0.7 by 0.3 cm, just right of the anterior midline.
>
> (9) Stab wound, sternal region, measuring 0.8 by 0.3 cm, 1 cm right of the anterior midline.
>
> (10) Stab wound, right mammary region, measuring 0.6 by 0.3 cm, 5 cm from the anterior midline.
>
> (11) Stab wound, left mammary region, measuring 0.6 by 0.3 cm, 6 cm from the anterior midline.
>
> (12) Stab wound, left axillary region, measuring 0.7 by 0.3 cm, 23 cm from the anterior midline.
>
> (13) Stab wound, left axillary region, measuring 0.7 by 0.3 cm, 24 cm from the anterior midline.
>
> (14) Abrasion, right costal region, measuring 0.5 by 0.4 cm, 5 cm from the anterior midline.
>
> (15) Stab wound, nape, measuring 0.5 by 0.2 cm, 2 cm right of the posterior midline.
>
> (16) Stab wound, nape, measuring 0.6 by 0.3 cm, 2 cm left of the posterior midline.
>
> (17) Stab wound, nape, measuring 0.5 by 0.2 cm, 2 cm right of the posterior midline.
>
> (18) Stab wound, left suprascapular region, measuring 0.5 by 0.2 cm, 6 cm from the posterior midline.
>
> (19) Abrasion, left shoulder, measuring 0.7 by 0.4 cm, 15 cm from the posterior midline.
>
> (20) Stab wound, left suprascapular region, measuring 0.5 by 0.3 cm, 10 cm from the posterior midline.
>
> (21) Stab wound, left suprascapular region, measuring 0.6 by 0.2 cm, 2.5 cm from the posterior midline.
>
> (22) Stab wound, left suprascapular region, measuring 0.5 by 0.2 cm, 5.5 cm from the posterior midline.
>
> (23) Stab wound, interscapular region, measuring 0.7 by 0.2 cm, 3 cm right of the posterior midline.
>
> (24) Stab wound, left scapular region, measuring 0.7 by 0.2 cm, 8 cm from the posterior midline.
>
> (25) Stab wound, right infrascapular region, measuring 1 by 0.3 cm, 11 cm from the posterior midline.

(26) Stab wound, left infrascapular region, measuring 0.8 by 0.2 cm, 6 cm from the posterior midline.

(27) Stab wound, left infrascapular region, measuring 0.7 by 0.2 cm, 8 cm from the posterior midline, 10 cm deep.

(28) Stab wound, left infrascapular region, measuring 0.6 by 0.2 cm, 9 cm from the posterior midline, 10 cm deep.

(29) Stab wound, left lumbar region, measuring 0.2 by 0.2 cm, 8 cm from the posterior midline.

(30) Stab wound, left suprascapular region, measuring 0.7 by 0.2 cm, 12 cm from the posterior midline.

(31) Stab wound, right mammary region, measuring 0.6 by 0.3 cm, 10.5 cm from the anterior midline.

(32) Ligature mark, around the right wrist, measuring 14 by 4 cm.

(33) Ligature mark, around the left wrist, measuring 18 by 0.6 cm.

(34) Contusion, left peri-orbital extending to the left maxillar region, measuring 11 by 8 cm, 5 cm from the anterior midline.

The 5th right and 2nd left thoracic rib and sternum at the level of the 3rd thoracic rib are fractured.

Both lobes of the left lung, all lobes of the right lung, pericardial sac, left ventricle of the heart, 4th right, 2nd, 3rd, 5th and 7th left intercostal spaces are lacerated.

Stomach is empty.

(Sgd.)
SUPT. DARIO L. GAJARDO MS (PNP)

CONCLUSION:

Cause of death is cardio-respiratory arrest due to shock and hemorrhage secondary to multiple stab wounds in the trunk.[11]

Dr. Gajardo testified that the victim sustained 30 stab wounds on her body, six of which, located on the lungs and the heart, were fatal. Four injuries were found to be ordinary marks, signs that the victim was tied with a rope or something that was rough.[12] When asked what kind of weapon could have caused the wounds on the victim's body, Dr. Gajardo stated that the instrument was pointed, containing no edges, much like an ice pick.[13]

SPO2 Geronimo Estacio, of PNP Station 1 in La Loma, Quezon City, testified that on October 19, 1991, he received a call from an informant who said that Pedro Francisco, Romeo Romero, and Salvador Gregorio were responsible for the killing of Purita Santos Luey and the robbery in the victim's house and that the suspects could be found at No. 86 Kaingin Road, Barangay Apolonio Samson. Accordingly, SPO2 Estacio said, he and two other policemen proceeded to the address given and, with the assistance of a barangay official, found Pedro Francisco sleeping on a bench. He testified that Pedro Francisco voluntarily went with them to PNP Station 1 in La Loma, Quezon City and that, on their way, Francisco admitted participation in the commission of the crime.[14] According to SPO2 Estacio, Francisco pointed to accused-appellant Romeo Romero and Salvador Gregorio as his companions in committing the crime.[15]

In the morning of October 21, 1991, Francisco led SPO2 Estacio and some policemen to a house in Malinta, Valenzuela where Romeo Romero and Salvador Gregorio were believed to be hiding.[16] The police failed to find the two suspects, but they were able to recover from the place a Sony Betamax and adaptor which, according to Pedro Francisco, he and his companions had taken from the house of victim Purita Santos Luey.[17] The Sony

Betamax (Exh. M) and adaptor (Exh. N) were later identified in court by Ping Yan Luey as among the items missing from his house after his wife had been killed.[18]

On October 22, 1991, Pedro Francisco expressed to SPO2 Mendez his willingness to give a statement in connection with the crime. After apprising Pedro Francisco of his constitutional rights, SPO2 Mendez accompanied the former that same afternoon to the Integrated Bar of the Philippines (IBP) Office in Quezon City, where they were referred to Atty. Florimond Ross.[19] The lawyer asked Francisco to execute a formal request for legal representation.[20] Francisco made the request (Exh. K), after which he was asked to remove some of his clothing to determine if there were signs of external bodily injuries. The lawyer found none.[21] Thereafter, Atty. Ross conferred with Pedro Francisco and informed him of the legal consequences of his confession.[22] Francisco said he was willing to make the confession.[23] Afterwards, SPO2 Mendez again informed Pedro Francisco of his constitutional rights.[24] In the presence of Atty. Ross, SPO2 Mendez took down the statement of Pedro Francisco, wherein the latter admitted involvement not only in the killing of Purita Santos Luey but also in the robbery perpetrated on the occasion thereof.[25] In his statement, Francisco identified accused-appellant Romeo Romero and Salvador Gregorio as his companions in committing the crime.[26]

The contents of his extrajudicial confession were read to Pedro Francisco and he was asked if he was giving the statements voluntarily and without duress. Francisco answered in the affirmative. Afterwards, he and Atty. Florimond Ross and SPO2 Rodrigo Mendez affixed their signatures to the said document.[27]

Telesforo Abogado, Jr., PNP Police Officer and resident of Pilar, Sorsogon, testified that the town fiesta of the Municipality of Pilar is celebrated on October 11 and 12 of each year, while the fiesta of Barangay Del Rosario in the same municipality is observed on October 6 and 7 of each year.[28]

On September 6, 1993, after nearly two years of sleuthing, the police finally caught Romeo Romero in Pilar, Sorsogon. He was brought to the PNP Station 1 in La Loma, Quezon City by the arresting officers.[29]

For its part, the defense presented accused-appellant Romeo Romero, who claimed that he and his family were in Barangay Del Rosario, Pilar, Sorsogon, attending its fiesta at the time the crime was committed on October 15, 1991. He testified that he and his family left for Bicol on October 4, 1991 and stayed there until his arrest on September 7, 1993.[30] Accused-appellant denied knowing Pedro Francisco and Salvador Gregorio, alleging that he came to know Francisco only in jail after his arrest.[31] No other witness was presented by the defense.

On February 11, 1999, the trial court rendered its decision, the dispositive portion of which reads:

> WHEREFORE, premises considered, judgment is hereby rendered finding herein accused ROMEO ROMERO Y ASIADO GUILTY beyond reasonable doubt of the complex crime of Robbery with Homicide as defined and penalized under Article 294, par. 1 of the Revised Penal Code and sentencing him to suffer the penalty of reclusion perpetua, to indemnify the heirs of the victim Purita Santos Luey the following:
>
> - the value of the stolen jewelries in the amount of P65,000.00;
>
> - indemnity for the victim's death in the amount of P50,000.00;
>
> - funeral and burial expenses in the amount of P46,000.00; and,
>
> - costs of the suit.
>
> SO ORDERED.[32]

Hence this appeal. Accused-appellant contends that —

> I. THE LOWER COURT GRAVELY ERRED IN GIVING FULL CREDENCE TO THE EVIDENCE OF

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THE PROSECUTION; AND

II. THE LOWER COURT GRAVELY ERRED IN CONVICTING THE ACCUSED FOR THE OFFENSE CHARGED.[33]

I.

The defense contends that no person actually witnessed the perpetration of the crime and that the prosecution evidence is entirely circumstantial and does not satisfy the quantum of proof necessary for conviction.

This contention has no merit. Under Rule 133, §4 of the Revised Rules of Evidence, circumstantial evidence is sufficient if: (a) there is more than one circumstance; (b) the facts from which the inferences are derived are proven; and (c) the combination of all the circumstances is such as to produce a conviction beyond reasonable doubt. In this case, the chain of circumstances established by the prosecution gives rise to a fair and reasonable conclusion that accused-appellant is one of the perpetrators of the crime, to wit:

(1)

The extrajudicial confession of co-accused Pedro Francisco;

(2)

The medico-legal report (Exhs. C and E) and the testimony of Dr. Dario Gajardo;

(3)

The recovery of accused-appellant's black bullcap (Exh. EE) from the scene of the crime; and

(4)

The positive identification of the accused Romero by witness Carlos Obal as one of the three men he had seen hurriedly leaving the victim's residence on the day the crime was committed, each one carrying a bag on his way out.

We will discuss these circumstances which, in their totality, create a moral certainty as to the guilt of accused-appellant.

First, as to the extrajudicial confession of co-accused Pedro Francisco in which he affirmed the circumstances surrounding the incident,[34] we hold that such confession is valid and admissible, having been voluntarily executed with the assistance of counsel, who explained to the accused the consequences of his confession. While as a rule such confession cannot be used as evidence against a co-accused for the same is considered hearsay, it may nevertheless be utilized as corroborative evidence to prove the existence of conspiracy among the accused in committing the crime. As held in People v. Aquino,[35] although an extrajudicial confession is admissible only against the confessant, it is admissible as corroborative evidence of other facts that tend to establish the guilt of his co-accused. The implication of this rule is that there must be a finding of other circumstantial evidence which, when taken together with the confession, establishes the guilt of a co-accused beyond reasonable doubt.

The following excerpt taken from accused Francisco's sworn statement (Exh. L) clearly shows the existence of conspiracy among the accused and the vivid details of how the crime was committed contained therein prove the complicity and participation of accused-appellant Romeo Romero in the commission of the crime in question:

T:

Noong petsa 15, ng Oktubre 1991 ng mga bandang ika 8:00 ng umaga nasaan ka?

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A:

Naglalakad na po kami ng mga kasama ko papunta sa may lugar ng krimen sir.

T:

Sino ba ang mga kasamahan mong naglalakad noong mga oras na iyon at saang partikular na lugar kayo naglalakad?

A:

Si SALVADOR GREGORIO po sir at si ROMEO sa may Cristine St., Parkway Village, Quezon City.

T:

Saan ba iyong tinutukoy mong lugar ng krimen?

A:

Doon po sa may bahay na may numerong 41 Cristine St., Parkway Village po.

T:

Ano ba ang dala-dala mo ng kayo ay magpunta doon sa may no. 41 Cristine St.?

A:

Wala po akong dala-dala sir.

T:

Itong si Salvador Gregorio, ano naman ang dala niya kung mayroon man?

A:

Bag po na kulay itim na medyo malaki.

T:

Ano naman ang laman ng naturang bag?

A:

Isang T-shirt po niya sir.

T:

Bukod sa bag mayroon ka pa bang nakitan (sic) ibang dala itong si Salvador?

A:

Wala na po akong napansin na dala niya o hawak.

T:

Ito namang si ROMEO ano ang dala niya kung mayroon?

A:

Wala din po siyang hawak o dala sir.

T:

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Mayroon akong ipakikita sa iyong mga sisidlan ng ice pick sabihin mo nga kung ano ang nalalaman mo dito?

A:

Iyon pong malaki ay sisidlan ng ice pick ni Romeo at iyong isa naman po ay kay ADOR.

T:

Mayroon akong ipakikita sa iyong isang sombrero na kulay itim na may tatak na letter na kulay pula, sino ba ang may-ari o maysuot nito?

A:

Iyan po ay suot ni Romeo ng magpunta kami doon sa no. 41 Cristine St., Parkway Village, Q.C.

T:

Mayroon naman akong ipakikita sa iyong isang liyabe at tubo na kulay pula, sino ang nakita mong maydala nito?

A:

Ang nakita ko pong may bitbit niya (sic) ay si Romeo.

T:

Paano ba kayong nakapasok doon sa may no. 41 Cristine St. sa may Parkway Village?

A:

Kumatok po kami sa may bakal na pintuan at kami po ay pinagbuksan ni Mrs. [Luey].

T:

Kayo ba naman ay pinatuloy o kusang pinapasok ni Mrs. LUEY sa kanilang bakuran?

A:

Opo, sir.

T:

Bakit naman kayo pinapasok ni Mrs. LUEY, kayo ba ay dati na niyang kakilala?

A:

Kilala po kami ni Mrs. LUEY sir, dahilan sa kami po ay gumawa na dati o nagtrabaho sa kanilang bahay.

T:

Nang makapasok kayo sa bakuran nila Mrs. LUEY ano ang ginawa ninyo?

A:

Bigla na lamang pong tinutukan ni ROMEO ng ice pick si Misis at inakap ito.

T:

Pagkatapos ano pa ang nangyari?

A:

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Hinatak po nila si Misis sa loob ng bahay, at bigla na lamang sinaksak ni Romeo sa may pintuan ng kusina at sinuntok naman nitong si ADOR sa mukha si Misis at ng makapasok sa loob ay pinagsasaksak na nila ito sa harap at sa likod.

T:

Ano naman ang ginawa mo habang sinasaksak ng dalawa si Mrs. LUEY?

A:

Hawak-hawak ko po sa dalawang kamay si Misis.

T:

Sino ba ang nagtali ng kuryente ng telepono sa leeg at kamay ni Mrs. LUEY?

A:

Si ADOR po, sir.

T:

Mayroon akong ipakikitang isang Betamax sa iyo, at isang adaptor, sabihin mo nga sa akin kung saan ito galing?

A:

Ng bumaba po sina Ador at Romeo galing sa itaas ay dala-dala na po nila iyan.

T:

Nalalaman mo ba na mayroon pa silang nakuhang mga alahas na nagkakahalaga ng animnaput limang libong piso sa kabuuan at hindi malamang halaga ng pera natin at Dolyar?

A:

Hindi ko po alam sir.

T:

Bakit naman hindi mo alam?

A:

Dahilan sa sila lamang po ang naghalughog ng bahay.

T:

Hindi ba at usapan na ninyong bukod sa pagnanakawan ay papatayin ninyong talaga itong si Mrs. Luey dahilan sa kayo ay kakilala niya?

A:

Opo sir, usapan po namin iyon habang naglalakad kami papunta doon.

T:

Ang ibig mong sabihin ay wala kang ginawa habang nandoon [k]ayo sa loob ng naturang bahay?

A:

Nandoon lamang po ako at nakatayo at nakabantay sa pintuan sa kusina.

T:

Doon pa lamang sa may kainan ay bumagsak na at patay na marahil si Mr. LUEY sino ba ang kumaladkad sa kanya patungong salas?

A:

Si Salvador po si (sic), siya ang humila sa buhok.

T:

Sino naman ang nagtali pa sa paa ng biktima sa may iron grill?

A:

Si Salvador din po sir.

T:

Saan ninyo inilagay itong mga Beta at adaptor ng kayo ay papaalis na?

A:

Sa bag po na kulay itim na dala nila.

T:

Hindi ba ikaw ang isa sa mga sumaksak sa biktimang si Mrs. LUEY?

A:

Hindi po sir.

T:

Nasaan naman ngayon ang mga panaksak na ginamit ng dalawa?

A:

Dala po nila sir.

T:

Ikaw ba ay binigyan nila ng pera?

A:

Opo, binigyan po ako ni Salvador noong Miyerkoles ng gabi ng halagang limandaang piso po.

T:

Nasaan na ngayon itong dalawang ito?

A:

Nakatakas po sila sir.

T:

Sino naman ang nagtabi o nagtago nitong Beta at Adaptor?

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A:

Dala po iyan ni Salvador patungong Malinta.

T:

Pansamantala ay wala na akong itatanong sa iyo, may gusto ka pa bang sabihin?

A:

Wala na po.[36]

After the execution of his extrajudicial confession, accused Francisco led the police to the lair of his co-accused in Malinta, Valenzuela where the authorities recovered the Betamax (Exh. M) and adaptor (Exh. N) which had been taken from the victim's house. The adaptor contained the name of its owner "Luey,"[37] whereas a similar label attached to the Betamax was removed.[38]

Second are the Medico-Legal Report (Exh. C) and the testimony of Dr. Dario Gajardo that the victim died of "cardio-respiratory arrest due to shock and hemorrhage secondary to multiple stab wounds in the trunk." In his testimony, Dr. Gajardo explained that of the 34 marks found on the victim's body, four were ordinary marks while the rest were stab wounds, six of which were fatal.[39] He explained that, based on their nature, the wounds were probably inflicted by a pointed instrument, possibly by an ice pick.[40] The possibility of the use of an ice pick in the stabbing of the victim explains the presence of the two ice pick scabbards at the scene of the crime and corroborates the statement of accused Pedro Francisco that his co-accused used an ice pick in stabbing the victim.[41]

Third is the recovery of accused-appellant's black bullcap, with the letter "E" engraved on it, from the scene of the crime,[42] which confirms Pedro Francisco's statement that accused-appellant wore a black cap bearing a red letter marking on it when they went to the Luey residence.[43]

Fourth is the positive identification of accused-appellant by Carlos Obal, who testified that on October 15, 1991, as he was approaching the residence of the victim, he saw accused-appellant, together with the two other accused, hurriedly coming out of the gate. Positive identification may be provided not only by a witness actually identifying an accused as the one who perpetrated the crime but also by one who has seen the accused at the scene of the crime on or about the time of the alleged incident. As this Court explained in People v. Gallarde:[44]

> . . . Positive identification pertains essentially to proof of identity and not per se to that of being an eyewitness to the very act of commission of the crime. There are two types of positive identification. A witness may identify a suspect or accused in a criminal case as the perpetrator of the crime as an eyewitness to the very act of the commission of the crime. This constitutes direct evidence. There may, however, be instances where, although a witness may not have actually seen the very act of commission of a crime, he may still be able to positively identify a suspect or accused as the perpetrator of a crime as for instance when the latter is the person or one of the persons last seen with the victim immediately before and right after the commission of the crime. This is the second type of positive identification, which forms part of circumstantial evidence, which, when taken together with other pieces of evidence constituting an unbroken chain, leads to only fair and reasonable conclusion, which is that the accused is the author of the crime to the exclusion of all others. If the actual eyewitnesses are the only ones allowed to possibly positively identify a suspect or accused to the exclusion of others, then nobody can ever be convicted unless there is an eyewitness, because it is basic and elementary that there can be no conviction until and unless an accused is positively identified. Such a proposition is absolutely absurd, because it is settled that direct evidence of the commission of a crime is not the only matrix wherefrom a trial court may draw its conclusion and finding of guilt. If resort to circumstantial evidence would not be allowed to prove identity of the accused on the absence of direct evidence, then felons

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> would go free and the community would be denied proper protection.
>
> In the case at bar, although prosecution witness Carlos Obal did not witness the robbery and the killing of the victim, he saw accused-appellant and the latter's companions leaving the Luey residence in a hurry and carrying a bag[45] on the day the crime was committed. Considering the statement of Pedro Francisco that he and his companions were at the Lueys residence at around 8 o'clock in the morning[46] and Obal's testimony that he saw the three as they were leaving the Luey residence at around the same time,[47] there is reason to believe that accused-appellant and his companions indeed committed the crime.

We find no reason to doubt Obal's testimony, absent any showing that he had any motive to testify falsely against accused-appellant. His positive identification of accused-appellant carries greater weight than the latter's bare denial and his self-serving claim that he was in Pilar, Sorsogon at the time of the commission of the crime in Quezon City.[48] As we have more than once said, alibi cannot prevail over the positive identification of an accused.[49] It crumbles in the face of clear and positive identification by the prosecution witnesses that the accused was a participant in the commission of the crime.[50] For this reason, it is considered the weakest defense an accused can invoke.[51] It is noteworthy that no witness was presented by the defense in the case at bar to corroborate accused-appellant's claim that he was in Barangay Del Rosario, Pilar, Sorsogon on October 15, 1991 to attend the barrio fiesta.

On the other hand, the prosecution presented Telesforo Abogado, Jr. of the PNP of Pilar, who said the barrio fiesta of Barangay Del Rosario is observed on October 6-7 of each year, while the town fiesta of Pilar is observed on October 11-12 each year, and not on October 15, the day the crime was committed.

It is likewise noteworthy that accused-appellant gave his address as No. 86 Kaingin Road, Balintawak, Quezon City.[52] This is the same address of accused Pedro Francisco (Exh. L), because in fact the lot, where their houses can be found, is a squatter's area. Accused-appellant's admission tends to confirm the testimony of prosecution witness Carlos Obal that he knew accused-appellant Romeo Romero because he (Obal) had once seen accused-appellant in the house of accused Pedro Francisco. Carlos Obal said the distance between the house of Pedro Francisco and that of Romeo Romero was only about two to three houses away.[53] It is not true that, as accused-appellant claims, he came to know Francisco only when he met him in jail. Indeed, the trial court observed in its decision that accused-appellant and Francisco were close and intimate towards each other whenever they were brought to the court for trial.

II.

We now consider the accused-appellant's civil liability. For the death of Purita Santos Luey (Exh. D), accused-appellant should be ordered to pay her legal heirs the amount of P50,000.00 as indemnity and P46,500.00 as expenses for the funeral services and the payment of a burial lot, which were duly proved (Exhs. H to J) by the prosecution. However, the award of actual damages for the alleged loss of jewelry cannot be sustained for lack of competent evidence to prove it. In People v. Oliano,[54] it was held:

> We cannot, however, sustain the award of actual damages. To seek recovery of actual damages, it is necessary to prove the actual amount of loss with a reasonable degree of certainty, premised upon competent proof and on the best evidence obtainable by the injured party. In this case, we find no such proof to sustain the award of actual damages. The prosecution merely presented a bond paper containing a list of the expenses allegedly incurred from the killing to the burial of Benjamin Matias. They did not present any receipt or other evidence to support the claim. Nonetheless, appellant should pay the heirs of the deceased temperate damages in the amount of P10,000. Under Article 2224 of the Civil Code, temperate damages "may be recovered when the Court finds that some pecuniary loss has been suffered but its amount cannot, from the nature of the case, be proved with certainty."

In this case, save for the testimony of Ping Yan Luey, Purita's husband, as to the existence and estimated value of the jewelry allegedly owned by the deceased and taken by the accused, no other evidence, such as receipts, was presented by the prosecution to prove that such pieces of jewelry indeed existed and that the same were taken by the accused-appellant and his companions.[55] As stated before, when the police and investigators arrived at the scene of the crime, there were already several people inside the premises, anyone of whom could have taken the jewelry. Indeed, even Pedro Francisco stated in his extrajudicial confession that he did not know whether such pieces of jewelry actually existed and, if they did, that they were taken by his co-accused. He testified that he saw accused-appellant and Salvador Gregorio going up the second story of the house of the Lueys and, upon coming back, bringing with them items stashed in their bags. Consequently, the amount of P65,000.00 (P75,000.00 minus P10,000.00 representing the value of the Betamax and adaptor) claimed by the prosecution cannot be upheld.

In lieu of actual damages, temperate damages should be allowed the heirs of Purita Santos Luey, considering that some pecuniary loss has been suffered but its amount cannot be proved with certainty.[56] The amount of P30,000.00 for temperate damages would be appropriate. In addition, in accordance with Art. 2219, in relation to Art. 2206, of the Civil Code, an award of moral damages in the amount of P50,000.00 is likewise reasonable.[57]

WHEREFORE, the decision of the Regional Trial Court, Branch 100, Quezon City, finding accused-appellant Romeo Romero y Asiado guilty of the complex crime of robbery with homicide and sentencing him to suffer the penalty of reclusion perpetua is AFFIRMED with the MODIFICATION that the award of P65,000.00 as actual damages is deleted and instead accused-appellant is ordered to pay to the heirs of victim Purita Santos Luey the following amounts:

(1)

P50,000.00 as indemnity for the victim's death;

(2)

P46,500.00 for funeral and burial expenses;

(3)

P30,000.00 as temperate damages representing the monetary equivalent of the items taken by the accused;

(4)

P50,000.00 as moral damages; and

(5)

Costs of this suit.

SO ORDERED.

Bellosillo, (Chairman), Quisumbing, Buena, and De Leon, Jr., JJ., concur.

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[1] Per Judge Mariano C. Del Castillo.

[2] Records, pp. 41-42.

[3] TSN, Oct. 24, 1996, pp. 5-10.

[4] Id., pp. 16-19.

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[5] Id., pp. 11-14.

[6] TSN, Nov. 19, 1992, pp. 15-17.

[7] Id., pp. 16-17.

[8] TSN, Feb. 19, 1997, pp. 9-10; TSN, Nov. 19, 1992, p. 3.

[9] TSN, Sept. 2, 1992, p. 4.

[10] TSN, Nov. 19, 1992, pp. 3-8.

[11] Exh. C; Records, p. 302.

[12] TSN, June 11, 1992, p. 14; TSN, Nov. 5, 1992, p. 2.

[13] TSN, June 11, 1992, pp. 11-14.

[14] TSN, Jan. 18, 1996, pp. 10-13, 27.

[15] Id., pp. 14-15.

[16] TSN, Jan. 15, 1997, p. 19; TSN, Jan. 18, 1996, pp. 15, 21.

[17] TSN, Jan. 18, 1996, pp. 14-15.

[18] TSN, Nov. 19, 1992, pp. 5-8.

[19] TSN, March 24, 1993, pp. 3-5; TSN, Dec. 2, 1992, pp. 16-18.

[20] TSN, Oct. 8, 1992, pp. 4-6; Id., pp. 18-19.

[21] TSN, Oct. 8, 1992, pp. 10-11, 20.

[22] Id., p. 9-10.

[23] Id., p. 11.

[24] TSN, March 24, 1993, pp. 6, 16

[25] Exh. L; Records, pp. 310-312; TSN, Oct. 8, 1992, pp. 12-13; TSN, March 24, 1993, p. 9.

[26] Id.; RTC Decision, pp. 5-7; Records, pp. 369-371.

[27] Id.; Records, pp. 310-312; TSN, Oct. 8, 1992, pp. 12-13.

[28] TSN, Aug. 6, 1998, pp. 5-13.

[29] TSN, Jan. 11, 1995, pp. 4-10.

[30] TSN, Jan. 29, 1998, pp. 5-6.

[31] Id., pp. 7-9.

[32] RTC Decision, p. 9; Records, p. 373.

[33] Appellant's Brief, p. 1; Rollo, p. 62.

[34] TSN, Oct. 8, 1992, pp. 2-25.

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[35] 310 SCRA 437 (1999).

[36] Records, pp. 311-312 (emphasis added).

[37] TSN, Nov. 19, 1992, p. 9; Exh.N-1.

[38] Id.; Exh. M-1.

[39] TSN, Nov. 5, 1992, p. 2.

[40] Id.

[41] Exh. L; Records, p. 311.

[42] TSN, Jan. 15, 1997, p. 7.

[43] Exh. L; Records, p. 311.

[44] 325 SCRA 835, 849-850 (2000).

[45] TSN, Oct. 24, 1996, p. 6.

[46] Exh. L; Records, p. 311.

[47] TSN, Oct. 24, 1996, p. 5.

[48] TSN, Jan. 29, 1998, pp. 3-6.

[49] People v. Magallanes, 218 SCRA 109 (1993); People v. Dela Cruz, 217 SCRA 283 (1993); People v. Dominguez, 217 SCRA 170 (1993).

[50] People v. Pacaña, 218 SCRA 346 (1993).

[51] People v. Tañote, 238 SCRA 443 (1994); People v. Magallanes, supra; People v. Dela Cruz, supra.

[52] TSN, Jan. 29, 1998, p. 3.

[53] TSN, Oct. 24, 1996, pp. 24-25.

[54] 287 SCRA 158, 179 (1998).

[55] TSN, Nov. 19, 1992, pp. 7-9.

[56] Civil Code, Art. 2224.

[57] People v. Gano, G.R. No. 134373, Feb. 28, 2001; People v. Fegidero, G.R. No. 113446, August 4, 2000.

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