

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. ANTONIO ABES Y YAMBOT @ “TONY” (DECEASED), SALDO YBAÑEZ Y ACEBES, ROBERTO BONTO Y MENDOZA @ “BERT,” RICARTE BUMAGAT Y ORDONA, RAUL YBAÑE...

G.R. No. 138937. January 20, 2004

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

For automatic review is the decision[1] of the Regional Trial Court of Bacoor, Cavite, Branch 89, dated September 30, 1998, in Criminal Case No. B-94-293. Its fallo reads:

ACCORDINGLY, finding all the accused (ANTONIO ABES y YAMBOT @ TONY, SALDO YBAÑEZ y ACEBES, ROBERTO BONTO y MENDOZA @ BERT, RICARTE BUMAGAT y ORDONA, RAUL YBAÑEZ y ACEBES and SIMEON SILVANO, JR., y GUITERREZ @ JHUN) GUILTY beyond reasonable doubt for (sic) Robbery with Homicide, they are each hereby sentenced to die by lethal injection one year after this decision becomes final. They are hereby ordered, jointly and severally, to indemnify the private complainant the amounts of P320,300.00 as compensatory damages; P240,000.00 as loss of earning capacity of her husband; P50,000.00 as moral damages; P50,000.00 as exemplary damages and P50,000.00 as and for attorney’s fees.

Let the entire records of this case be transmitted to the Supreme Court for automatic review.

SO ORDERED.[2]

The appellants in the present case were all long-time residents of the town of General Mariano Alvarez (GMA), Cavite. All had previously been employed in various capacities by the GMA Water District. Their alleged victims, the late Antonio Calaycay and his wife, Catalina Calaycay, were also residents of GMA and owners of a grocery and a retail store.

On July 11, 1994, the Office of the Provincial Prosecutor of Cavite charged the appellants with the special complex crime of robbery with homicide (robo con homicidio) allegedly committed as follows:

That on or about the 20[th] day of March 1994 at around 7:30 o’clock in the evening at Lot 3, Block 35, Carillo Teacher’s Village, Municipality of Gen. Mariano Alvarez, Province of Cavite, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping and aiding one another, with intent to gain, by means of force, violence and intimidation, being then armed with a deadly weapon and an unlicensed firearm, taking advantage of their superior strength, and against the will and consent of the owners thereof, did, then and there, willfully, unlawfully and feloniously, take, steal, rob and carry away from Spouses Antonio Calaycay and Catalina Calaycay the following, to wit:

- Cash money amounting to P90,000.00;
- Wallet containing P1,000.00 cash money, a Far East Bank ATM card and a driver’s license; and

- Check Booklet of the Bank of the Philippine Islands,

and during the commission of the crime of Robbery and/or subsequent thereto and by reason or on the occasion thereof, the above-named accused, with intent to kill, being then armed with the aforementioned deadly weapon and unlicensed firearm and again conspiring, confederating and mutually helping and aiding one another, with treachery and evident premeditation and with abuse of superior strength, did then and there, wilfully, unlawfully and feloniously, stab and fire upon the person of Antonio Calaycay causing his subsequent death, and also shoot and fire upon the person of Catalina Calaycay hitting her in the abdomen, the above-named accused, having thus performed all the acts of execution which should have produced the crime of Murder as a consequence thereof but which nevertheless did not produce it by reason of causes independent of the will of the accused, that is, by reason of the timely and able medical attendance rendered to the said victim which prevented her death, to the damage and prejudice of said Catalina Calaycay and to the legal heirs of Antonio Calaycay.

CONTRARY TO LAW.[3]

When arraigned, all of the appellants pleaded not guilty. Thereafter, trial proceeded.

The prosecution's version of the incident established that:

The spouses Antonio and Catalina Calaycay owned and operated a grocery store at the public market of GMA, Cavite.[4] They also had a retail store at their residence at Block 3, Lot 35, Teacher's Village, GMA, which was directly managed by Antonio.[5]

At around 7:30 p.m. of Sunday, March 20, 1994, Antonio and Catalina were on their way home from their grocery store in the market aboard their jeep driven by Antonio.

When they reached home and were about to park their jeep, they noticed appellants Antonio Abes, Raul Ybañez, his brother Saldo Ybañez, and Roberto Bonto standing in front of their house, while appellants Simeon Silvano, Jr., and Ricarte Bumagat were at the corner of the street near their house.[6] The faces of the Ybañez brothers, Bumagat, Abes, and Bonto were familiar to Catalina because they were frequent customers of their store. She also knew Silvano, Jr., for he was a former member of the police force of GMA.[7]

Before the Calaycay spouses could disembark from their jeep, Abes and Raul Ybañez approached her, while Saldo Ybañez and Bonto approached Antonio. All were carrying short firearms. Suddenly, Abes announced a hold-up and warned Catalina not to move. At the same time, he grabbed Catalina's bag, which contained the P90,000.00 sales for the day from their grocery and her wallet containing P1,000.00, her automated teller machine (ATM) card, a check booklet and her driver's license.[8] Catalina resisted and tried to hold on to her bag. Raul Ybañez pistol-whipped her while Abes fired at her three times at close range, [9] but only succeeded in grazing her. Antonio tried to come to her assistance, but was stabbed thrice by Saldo Ybañez and shot three times by Bonto.[10] After Abes grabbed possession of Catalina's bag, he passed it to Silvano, who then told his companions, "Hali kayo bilis, sunod kayo sa akin, doon tayo sa likod dadaan" (come quick, follow me, and let's pass at the back).[11] The incident was witnessed by prosecution witnesses Salvador Arcenal[12] and Catalino Mutya, Jr.[13]

Antonio was first brought by Catalina and responding neighbors to the Medicare Community Hospital in GMA, where he was pronounced dead on arrival. Hoping that her husband could still be revived, Catalina brought him to the De La Salle University Medical Center in Dasmariñas, Cavite. Efforts were made to revive Antonio, but in vain. The autopsy conducted later by the National Bureau of Investigation (NBI) showed that Antonio died of "Wounds, gunshot and stab, multiple."[14] Catalina was treated for hematoma and contusions of the right shoulder.

The incident was reported by Catalina to the NBI and, after an investigation, an NBI team composed of some twenty (20) agents and operatives accompanied Catalina to GMA. There all the appellants were apprehended.

At the trial, the appellants interposed the defense of denial and alibi.

Appellant Abes testified that at the time that the Calaycay spouses were held up, he was at his house at Area D, Lot 2, Block 22, Barangay Malia, GMA, Cavite, conversing with his neighbor, Godofredo Inciong. Abes said he never left his house.[15] This was corroborated by Inciong[16] and Laarni Abes,[17] appellant's daughter.

For his part, appellant Bonto declared that he was at his house at Lot 39, Block 17, Poblacion H, GMA, attending to the relatives, neighbors, and friends who came for the interment of his daughter, Ma. Lourdes Bonto-Egante, who died on March 14, 1994 and was buried on March 20, 1994.[18] He presented a neighbor, Herminio Vival, to support his alibi.[19] He also presented a written statement executed by at least fifteen (15) of his neighbors for the same purpose. Further, Bonto proffered in evidence a certification from the Barangay Captain of Poblacion, GMA, attesting to his good moral character.

Appellant Bumagat testified that at the time of the incident he was at his house in Lot 37, Block 3, Area D, GMA, together with his wife and children cooking food for supper.[20] This was corroborated by Mrs. Virginia Gabriel, a high school teacher, who claimed that she was at the Bumagat residence from 6:00 to 8:30 p.m. of March 20, 1994, conversing with the Bumagats and she saw Ricarte Bumagat at his house the whole time, preparing the family's evening meal.[21] Mrs. Gabriel admitted that she and her husband were close friends of Bumagat.[22]

Appellant Simeon Silvano, Jr., and Saldo Ybañez both testified that they attended the burial of their co-appellant's deceased daughter, Maria Lourdes Bonto-Egante, who was buried at the GMA cemetery on March 20, 1994. After the interment, they proceeded to the house of Reynaldo Silvano, the brother of Simeon, to attend Reynaldo's birthday party. With them was Adelfa Silvano, Simeon's wife. They arrived at Reynaldo's party at around 6:40 p.m. and stayed until 7:40 p.m., after which they left for home.[23] Their attendance at Reynaldo's birthday fete was witnessed by appellant Simeon's sister, Zenaída Brion;[24] his neighbor, David Sebastian;[25] and his mother, Mrs. Caridad Silvano.[26]

Appellant Saldo Ybañez further testified that at the time of the alleged incident, he was already at home, having just arrived from Reynaldo Silvano's birthday party, which he attended with appellant Silvano, Jr.[27]

Appellant Raul Ybañez stated under oath that at the time of the occurrence complained of, he was at the house of his neighbor, Divina Inciong, at Lot 6, Block 7, Barangay Elises, GMA, watching TV. He was with his common-law wife, Josephine and their child.[28] Afterwards, he said he went home with his family and went to sleep. To buttress his alibi, he presented Divina Inciong to corroborate his statement.[29]

The defense presented its eyewitness, one Susan Purihin, who testified that she saw the incident. She said no one among the appellants had a hand in perpetrating the crime. The culprits, according to her, were one "Erning Taga" and his companions.[30]

The trial court disbelieved the defense, but found the prosecution's version credible. Accordingly, it convicted the appellants of robbery with homicide. In view of the imposition of the death penalty upon all the appellants, the records of the case were elevated to this Court for automatic review.

During the pendency of this automatic review, we were informed by Assistant Director Joselito A. Fajardo of the Bureau of Corrections that appellant Antonio Abes died at the National Bureau of Prisons Hospital on March 6, 2002.[31] The initial certificate of death presented showed that the death of Abes was due to undetermined causes.[32] But on July 15, 2003, the Court was informed by Assistant Director Reinerio F. Albano of the Bureau

of Corrections that Abes died on March 6, 2002 due to “myocardial infarction, old and recent”[33] as indicated by the postmortem findings in the accompanying certificate of death.[34]

In our resolution of August 5, 2003, we dismissed the case as to appellant Antonio Abes y Yambot “by reason of his death.”[35] Hence this review will focus now only on the remaining five appellants, namely: Saldo Ybañez, Roberto Bonto, Ricarte Bumagat, Raul Ybañez, and Simeon Silvano, Jr.

The records show that on August 29, 2000, Atty. Alfredo C. Medina manifested to us his wish to be relieved as counsel for appellant Simeon Silvano, Jr.[36] He was replaced by one Atty. Jose L. Sineneng, Jr., who entered his appearance for Silvano, Jr., on September 20, 2000. Atty. Sineneng also moved for an extension of thirty (30) days to file an appellant’s brief for Silvano, Jr.[37] In our resolution of October 24, 2000, we granted Atty. Medina’s prayer to be allowed to withdraw as counsel for Silvano, Jr., and granted the motion of Atty. Sineneng, Jr., for an extension of thirty (30) days or until October 25, 2000 to file an appellant’s brief for Silvano, Jr.

On October 24, 2000, Atty. Sineneng filed a second motion for extension of time of fifteen (15) days to file appellant’s brief, which we granted in our resolution of November 14, 2000 with warning that “this would definitely be the last extension to be given by the Court.”

On November 13, 2000, Atty. Sineneng filed a “Final Motion for Extension of Time to File Appellant’s Brief” for another thirty (30) days or until December 8, 2000, which we granted with final warning that no more extensions would be granted.

It then came to our notice that a copy of our resolution of July 9, 2002 addressed to “Atty. Jose L. Saneneng” was returned unserved, with the notation “moved out.” In our resolution of September 24, 2002, we directed Atty. Luzviminda D. Puno, Clerk of Court of the Supreme Court, to verify from the Integrated Bar of the Philippines (IBP) the current address of Atty. Jose L. Saneneng and to resend the resolution of July 9, 2002 at such address. On November 25, 2002, the Court was informed by the IBP, through Atty. Jaime M. Vibar, the IBP National Secretary, that “the name Atty. Jose L. Saneneng does not appear in the list of our members.”

On January 14, 2003, we resolved to direct Atty. Jose L. Sineneng, Jr., to show cause why no disciplinary action should be taken against him for his failure to file an appellant’s brief for Silvano, Jr., and to comply with the resolution requiring the filing of the brief. We also directed appellant Silvano, Jr., to inform us whether he was interested in securing the services of a new counsel or if he desired us to appoint a counsel for him. We likewise resolved to refer the letter of Atty. Vibar to the Bar Confidant for verification of the Bar membership of Atty. Jose L. Sineneng, Jr.

On February 24, 2003, we resolved that “the copy of the resolution of 10 December 2002 addressed to Atty. Jose L. Saneneng, counsel for appellant S. Silvano, Jr., Rm. 504 J & T Building, Magsaysay Blvd., Sta. Mesa, Manila” be deemed served and to require the Bar Confidant to submit a written report on “Atty. Jose L. Saneneng’s membership in the Bar.”

In her report dated March 3, 2003, Atty. Maria Cristina B. Layusa, the Bar Confidant, reported to us as follows:

Per verification, the name JOSE L. SANENENG does not appear in the Roll of Attorneys. What appears therein is the name JOSE L. SINENENG, JR. of Sta. Isabel, Malolos, Bulacan who was admitted in the Philippine Bar on April 27, 1989.[38]

On May 6, 2003, we again resolved to require Atty. Sineneng to show cause why no disciplinary action should be taken against him for failure to file appellant’s brief for Silvano, Jr., and to file said brief within ten (10) days from notice.

On June 3, 2003, Atty. Vibar informed us that there is an IBP member by the name of Atty. Jose L. Sineneng, Jr., and furnished us with both the office and home addresses of said Atty. Sineneng.[39] On August 5, 2003, we directed the Clerk of Court to send all prior notices to both the residential and office addresses of Atty. Sineneng as furnished by the IBP.[40] To date, however, no appellant's brief has been filed by Atty. Sineneng on behalf of his client, Simeon Silvano, Jr., nor has the latter manifested that he wishes to engage the services of another lawyer or that he desires to have the Court appoint a counsel de oficio for him.

It has been over three (3) years since counsel for Silvano, Jr., last moved for an extension of time to file the required brief. We have granted every extension of time prayed for, but to no avail. Were this an ordinary appeal, we would not have hesitated to apply Section 8,[41] Rule 124 of the 2000 Rules of Criminal Procedure in relation to Section 1,[42] Rule 125. However, it is settled that Section 8 of Rule 124 has no application to cases where the death penalty has been imposed.[43] In the leading case of *US v. Laguna*, 17 Phil. 533 (1910), we laid down the rule that the power of this Court to review a decision imposing the death penalty cannot be waived either by the accused or by the court. We are well aware that for several years now, the appellants herein have been languishing in death row, with the possibility of execution by lethal injection dangling over their heads like the sword of Damocles. This anguish has been prolonged by the delay in the filing of the appellant's brief for Silvano, Jr., which has caused this case to remain stagnant in the Court's docket. Without prejudice to the imposition of proper disciplinary action on counsel for the accused, we can no longer permit that this case suffer further delay. Hence, we shall proceed to discharge our task by carefully reviewing the judgment of the trial court, based on its findings of fact and application of the law thereon, and thereby determining the propriety of its imposition of the death penalty[44] which appellants now challenge.

In their joint brief, appellants Roberto Bonto and Antonio Abes attribute to the RTC the following errors:

I

THE TRIAL COURT ERRED IN FINDING ACCUSED-APPELLANTS ANTONIO ABES AND ROBERTO BONTO GUILTY OF THE CRIME OF ROBBERY WITH HOMICIDE.

II

THE TRIAL COURT LIKEWISE ERRED IN DISREGARDING THE DEFENSE INTERPOSED BY THE ACCUSED-APPELLANTS ANTONIO ABES AND ROBERTO BONTO.

III

ASSUMING THAT ACCUSED-APPELLANTS ANTONIO ABES AND ROBERTO BONTO WERE GUILTY OF THE CRIME CHARGED, THE TRIAL COURT ERRED IN IMPOSING THE DEATH PENALTY UPON THEM, SINCE THE AGGRAVATING CIRCUMSTANCE OF BAND WAS NOT ALLEGED IN THE INFORMATION.[45]

In his separate brief, appellant Bumagat assigns the following errors:

I

THE TRIAL COURT GRAVELY ERRED IN FINDING ACCUSED-APPELLANT RICARTE BUMAGAT y ORDOÑA GUILTY OF THE CRIME OF ROBBERY WITH HOMICIDE DESPITE THE FACT THAT THE EVIDENCE PRESENTED BY THE PROSECUTION AGAINST HIM IS INSUFFICIENT TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.

II

THE TRIAL COURT ERRED IN FINDING THAT THERE WAS CONSPIRACY IN THE COMMISSION

OF THE CRIME CHARGED.[46]

In their brief, the brothers Saldo and Raul Ybañez assign as errors the following:

I

THE TRIAL COURT ERRED IN FINDING THE ACCUSED- APPELLANTS SALDO AND RAUL YBAÑEZ GUILTY OF THE CRIME OF ROBBERY WITH HOMICIDE NOTWITHSTANDING THE FACT THAT THEIR GUILT HAS NOT BEEN PROVEN BEYOND REASONABLE DOUBT.

II

THE TRIAL COURT ERRED IN FINDING THAT ACCUSED-APPELLANT RAUL YBAÑEZ IS A CO-CONSPIRATOR IN THE CRIME CHARGED.[47]

The assigned errors by the appellants present pertinent issues concerning (1) the identification of appellants as the culprits and the sufficiency of the prosecution's evidence to sustain a conviction for the offense charged; (2) the correctness of the trial court's finding that appellants acted in conspiracy and holding them liable as co-conspirators; and (3) the propriety of the penalty imposed on each of the appellants.

Appellants question the identification of the malefactors made by Catalina Calaycay and the other prosecution witnesses on the ground that inadequate lighting at the locus criminis made positive identification impossible or, at best, unreliable. Appellants contend that in view of the poor illumination at the crime scene, the trial court should not have accepted the identification of the appellants as the malefactors by the prosecution witnesses hook, line, and sinker. Appellants submit that in view of the possible doubts as to their identification by the prosecution witnesses, the prosecution failed to overcome the presumption of innocence in their favor.

For the appellee, the Office of the Solicitor General (OSG) counters that the prosecution duly established that Catalina Calaycay clearly saw the perpetrators whom she identified as the appellants herein by the light of a fluorescent light in front of the Calaycay residence. The OSG argues that the defense likewise failed to controvert the fact that the headlights of the Calaycays' jeep were on, prior to and at the time of the incident, adding further illumination to the crime scene, thus making identification even easier. Furthermore, the OSG claims that as duly established by witnesses, the headlights of the many passing vehicles afforded illumination for good visibility thus making Catalina's identification of the appellants as the persons responsible for the crime highly credible.

In our view, appellants' arguments lack merit. We sustain the OSG's submission.

First, in assailing the positive identification made by Catalina Calaycay, the appellants conveniently overlook her testimony that she was familiar with them even before the incident complained of had occurred. Recall that Catalina declared that moments before the incident, she recognized the Ybañez brothers, Bumagat, Abes, and Bonto because they were frequent customers of their store, while she knew Silvano, Jr., as he was a former member of the GMA police force. As against this positive declaration of Catalina's, the most appellants could offer were only denials that they knew her, or that they patronized her store or grocery in the public market. Only Bumagat admitted to knowing her by face and that she had a store in the public market.[48]

Catalina's testimony on appellants' identification must stand, taking into consideration that most of the parties to this case are long-time residents of the same municipality, residing not too far from each other.[49] Plainly said, the parties are not strangers to one other. Catalina testified that she has been residing in GMA since 1972.[50] Abes admitted on cross-examination that he had been staying in his house in said town for more or less twenty-five (25) years.[51] Bonto testified that he had been working as a plumber in GMA for twenty (20) years.[52] A witness for Bonto testified that Bonto has been his neighbor in GMA since 1975.[53] A witness

presented by Silvano, Jr., to corroborate his alibi, declared that he and Silvano, Jr., had been neighbors in GMA since 1975.[54] Only the Ybañez brothers had been residents in said town for less than a year.

Over the span of time that the parties hereto had been living in the same town, they have become acquainted with each other's faces. In the rural areas, people tend to be more familiar with their town mates. As a rule, familiarity with the physical features, particularly those of the face, is actually the best way to identify the person.[55] It was precisely this familiarity with the faces of the appellants that led Catalina to positively identify them as the malefactors.

Second, as found by the trial court, the robbery took place at a very close range, in front of the Calaycay store, whose immediate frontage was lighted by a fluorescent lamp, as well as by the headlights of the jeep owned by the Calaycays, and the lights of passing vehicles. Thus we agree that Catalina was afforded the opportunity to look fully at the faces of the persons who robbed her and fired a gun at her as well as their companions who shot and stabbed her husband to death. The conditions of visibility that fateful evening were, in our view, sufficient for identification of the malefactors. The illumination from a fluorescent lamp, the headlights of a parked jeep, and the lights of passing vehicles suffice for such identification. Moonlight,[56] starlight,[57] kerosene lamps,[58] a flashlight,[59] and lights of passing vehicles[60] have been declared adequate to provide illumination sufficient for purposes of recognition and identification. The illumination provided by a fluorescent lamp, the headlights of a jeep, and the lights of passing vehicles altogether made identification easier. But even where the circumstances were less favorable, witness Catalina's familiarity with faces of appellants considerably reduced any error in identifying the culprits. Appellants' contentions on this score show neither a valid reason nor a sufficient cause why we should reject Catalina's testimony identifying appellants as the culprits.

Appellants advance not a single reason why Catalina would falsely accuse them or implicate them in so terrible a wrong. Where there is nothing to indicate that a witness was actuated by improper motives, his or her positive declarations on the witness stand, made under solemn oath, deserve full faith and credence.[61]

Positive identification of the accused where categorical and consistent, and without any showing of ill motive on the part of the eyewitness testifying, should prevail over the alibi and denial of appellants whose testimonies are not substantiated by clear and convincing evidence. Such denial and alibi are negative and self-serving evidence undeserving of any weight in law.[62]

In this case, we find the evidence proffered by the appellants in support of their respective alibis extremely weak. For alibi to prosper, it is not enough for the accused to prove that he was somewhere else when the crime was committed. He must likewise prove that he could not have been physically present at the scene of the crime or its immediate vicinity at the time of its commission.[63] In this case, we note the following:

- a) Appellant Abes declared on cross-examination that his house was but two (2) kilometers away from the place where the Calaycay spouses resided.[64]
- b) Appellant Bonto testified that his house was a mere seven hundred (700) meters away from the crime scene.[65]
- c) Appellant Bumagat admitted that the distance from his residence to the place of the incident is but four (4) kilometers.[66]
- d) Appellant Silvano, Jr., stated that his residence is located but two (2) kilometers away from the situs of the incident, a distance which could be negotiated by jeepney travel in just 15 to 20 minutes.[67]
- e) Appellant Raul Ybañez candidly stated that he resided in Barangay Elises, GMA, Cavite,[68] and that at the

time of the incident, he was at a neighbor's house.[69]

f) Appellant Saldo Ybañez testified that he lived just across Silvano, Jr.[70] The house of Reynaldo Silvano, where appellants Silvano, Jr., and Ybañez allegedly attended a birthday party at the time of the occurrence of the offense charged is roughly one (1) kilometer away from the residence of Silvano, Jr., as per his own admission.[71]

From the foregoing, it is clear that there was no physical impossibility for any and all of the appellants to be at the scene of the crime when it happened. Hence, their defense of alibi must fail.

In the special complex crime of robbery with homicide, a crime primarily classified as one against property and not against persons, the prosecution is tasked to establish the following elements: (a) the taking of personal property with the use of violence or intimidation against a person; (b) the property thus taken belongs to another; (c) the taking is characterized by *animus lucrandi*; and (d) on the occasion of the robbery or by reason thereof, the crime of homicide, which is therein used in a generic sense, was committed.[72] In this case, we find that the prosecution had amply established those elements.

But did the prosecution sufficiently establish conspiracy among the appellants?

Appellants Bumagat and Raul Ybañez question the finding of the trial court that there was conspiracy among all the appellants to commit the crime. Bumagat reiterates that since he was not positively identified at the crime scene, he cannot be deemed a conspirator. Raul Ybañez points out since all he did, as per the prosecution's own testimony, was to club Catalina on the shoulder with his firearm, there is no definite showing from his acts that he assented to the killing of Antonio. Instead, all that can be inferred from his act, assuming the prosecution witnesses testified correctly, was the intent to take part in the robbery and nothing more. Thus, he argues that only the actual killers of Antonio should be held liable.

There is conspiracy when two or more persons agree to commit a felony and decide to commit it.[73] Conspiracy as a mode of committing a crime must be proved separately from and with the same quantum of proof as the offense itself, but from its essential features of secrecy and concealment, it need not be proved by direct evidence. Instead, it is sufficient for conspiracy to be inferred from the conduct of the accused before, during, and after the commission of the felony, showing they had acted with a common purpose and design.[74] Stated differently, the rule is that conviction is proper upon proof that the accused acted in concert, each of them doing his part to fulfill the common unlawful design, each doing a part so that their combined acts, though apparently independent of each other, were, in fact, connected and cooperative, indicating a closeness of personal association and a concurrence of sentiment.[75] In such a case, the act of one becomes the act of all and each of the accused will be deemed equally guilty of the crime committed.[76]

In the present case, Catalina saw Abes, Bonto, and the Ybañez brothers standing in front of the Calaycay's store just as she and Antonio arrived from the public market on board their jeep. At the street corner stood Silvano, Jr., and Bumagat. All six were armed with short firearms. Abes and Raul Ybañez approached Catalina's side of the jeep, while Bonto and Saldo Ybañez went over to Antonio's side. Abes declared the hold-up and grabbed Catalina's bag. When Catalina resisted, Abes fired at her, while Raul Ybañez struck her with the handgun he was carrying. When Antonio tried to go to her assistance, Bonto shot him, while Saldo Ybañez stabbed him several times in the back. All the while, Silvano, Jr., and Bumagat acted as look-outs in the street corner. After the robbery was accomplished, with Antonio Calaycay lying dying on the ground from his injuries, Silvano, Jr., told Abes to hurry up and follow him and all the appellants left together.

Given this factual backdrop, it cannot be said that appellants Bumagat and Raul Ybañez just happened to be at the

scene of the crime. It taxes one's credulity to say they did not share the common purpose of their co-accused in the commission of an offense. In striking Catalina with his handgun, while Abes was grabbing her bag, Raul Ybañez clearly cooperated in and labored towards the same purpose as the rest of the appellants, which is to rob their victims of cash and valuables. Appellant Bumagat acted as one of two look-outs before and while the robbery was in progress. He facilitated the gang's getaway. Both Raul Ybañez and Bumagat fled the crime scene together with the other appellants, leaving as they did together. All these prove beyond reasonable doubt the existence of conspiracy among all the appellants.

As a rule, whenever homicide has been committed as a consequence of or on the occasion of the robbery, all those who took part as principals in the robbery will also be held guilty as principals of the special complex crime of robbery with homicide although they did not actually take part in the homicide, unless it clearly appears that they endeavored to prevent the homicide.[77] In the case at bar, there is absolutely no showing that either Raul Ybañez or Bumagat tried to prevent the fatal stabbing and shooting of Antonio Calaycay while Catalina Calaycay was being divested of her bag containing money and other valuables. Thus, the trial court did not err in holding that the cooperative acts of the appellants, pursuing their common criminal purpose render them equally liable as conspirators in the offense of robbery with homicide.

However, we cannot agree that the death penalty be imposed on appellants.

Appellant Bonto contends that it was error for the trial court to sentence them to capital punishment, considering that the generic aggravating circumstance of band was not alleged in the Information. The Solicitor General agrees, and submits that aggravating circumstances not alleged in the charge sheet could not be appreciated so as to raise the imposable penalty to death.

We find merit in their contention and submission.

The crime of robbery with homicide is punishable by reclusion perpetua to death under Article 294 (1) of the Revised Penal Code. Absent any aggravating or mitigating circumstance, the lower penalty, which is reclusion perpetua, should be imposed.[78]

As to damages awarded by the trial court, modification is in order. Civil indemnity ought to be awarded to the heirs of the deceased Antonio Calaycay. For when death occurs as a result of a crime, the heirs of the deceased are entitled to the amount of P50,000.00 as indemnity ex delicto for the death of the victim, without need of further evidence or proof of damages.[79]

The amount of P320,300.00 was awarded by the trial court as actual damages, which include: the hospital bill from the De La Salle University Medical Center for P1,300.00, the funeral service for the victim in the amount of P40,000.00, a memorial lot for the victim at P180,000.00, and expenses for the wake in the sum of P8,000.00. However, the record discloses that only the amount of P40,000.00 for the funeral services of the deceased is supported by a receipt.[80] To be entitled to an award of actual damages, it is necessary to prove the actual amount of the loss with a reasonable degree of certainty, premised upon competent proof and on the best evidence obtainable by the injured party,[81] which usually means official or valid receipts. Hence, we agree that the award of actual damages here should be reduced to P131,000.00 only, consisting of the P91,000.00 cash lost during the robbery and the P40,000.00 incurred for funeral services.

In addition, however, we find it proper that temperate damages be awarded. Where the Court finds that some pecuniary loss has been incurred but the amount cannot be proved with certainty,[82] such as for medical services and the wake, temperate damages are appropriately given. Thus, in *People v. Solamillo*,[83] which involved robo con homicidio, the computation in *People v. Abrazaldo*,[84] fixing temperate damages at P25,000.00, which is

half the amount of the indemnity ex delicto, was affirmed.

We sustain also the award of P240,000.00 for loss of earning capacity, based on the trial court's computation. The award of P50,000.00 as exemplary damages is likewise justified, to stress the need for deterrence against the use of firearms, particularly unlicensed ones. Finally, it follows that the award of attorney's fees must also be affirmed.

WHEREFORE, the decision of the Regional Trial Court of Bacoor, Cavite, Branch 89, dated September 30, 1998, in Criminal Case No. B-94-293 finding appellants Roberto Bonto y Mendoza, Ricarte Bumagat y Ordoña, Simeon Silvano, Jr. y Gutierrez, Raul Ybañez y Acebes, and Saldo Ybañez y Acebes GUILTY beyond reasonable doubt of Robbery with Homicide is AFFIRMED with MODIFICATION. The death penalty imposed on them is hereby REDUCED TO RECLUSION PERPETUA. They are jointly and severally ORDERED to pay private complainant CATALINA CALAYCAY, widow of the late Antonio Calaycay, the sums of P131,000.00 as actual damages, P240,000.00 for loss of earning capacity, P50,000.00 as civil indemnity, P50,000.00 as moral damages, P25,000.00 as temperate damages and P50,000.00 as attorney's fees, as well as the costs.

SO ORDERED.

Davide, Jr., C.J., Puno, Vitug, Panganiban, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Corona, Carpio-Morales, Callejo, Sr., Azcuna, and Tinga, JJ., concur.

[1] Records, pp. 455-474.

[2] Id. at 473-474.

[3] Records, pp. 1-2.

[4] TSN, 26 October 1994, p. 13.

[5] Id. at 14.

[6] TSN, 20 October 1994, p. 10.

[7] TSN, 26 October 1994, pp. 19-20.

[8] TSN, 20 October 1994, p. 12.

[9] Id. at 13; TSN, 26 October 1994, pp. 32-35.

[10] TSN, 20 October 1994, pp. 14-15.

[11] TSN, 19 April 1995, pp. 10-11.

[12] See TSN, 19 April 1995; TSN, 5 June 1995.

[13] See TSN, 19 June 1995, 21 June 1995, and 26 June 1995.

[14] Exh. "D" and sub-markings, Folder of Exhibits for the Prosecution.

[15] TSN, 7 April 1997, pp. 8-12.

[16] TSN, 28 October 1996, pp. 24-28.

[17] TSN, 16 April 1997, pp. 5-8.

[18] TSN, 12 February 1997, pp. 19-25.

[19] TSN, 7 August 1996, pp. 15-22.

[20] TSN, 29 January 1997, pp. 34-38.

[21] TSN, 13 November 1996, pp. 6-7, 10-14.

[22] Id. at 5-6.

[23] TSN, 9 October 1996, pp. 4-10.

[24] TSN, 10 June 1996, pp. 37-42, 44-46.

[25] TSN, 21 August 1996, pp. 7-9, 12-14.

[26] TSN, 14 April 1997, pp. 6-13.

[27] TSN, 14 October 1996, pp. 25-29.

[28] TSN, 18 November 1996, pp. 9-11.

[29] TSN, 17 June 1996, pp. 7, 10-11, 13-15.

[30] See TSN, 24 July 1996, pp. 12-13.

[31] Rollo, p. 341.

[32] Id. at 342.

[33] Id. at 353.

[34] Id. at 355 (dorsal side).

[35] Id. at 357.

[36] Id. at 108-110.

[37] Id. at 112-113.

[38] Rollo, p. 345.

[39] Id. at 352.

[40] Id. at 357.

[41] SEC. 8. Dismissal of appeal for abandonment or failure to prosecute. – The Court of Appeals may, upon motion of the appellee or motu proprio and with notice to the appellant in either case, dismiss the appeal if the appellant fails to file his brief within the time prescribed by this Rule, except where the appellant is represented by a counsel de oficio.

The Court of Appeals may also, upon motion of the appellee or motu proprio, dismiss the appeal if the appellant escapes from prison or confinement, jumps bail or flees to a foreign country during the pendency of the appeal.

[42] SEC. 1. Uniform procedure. – Unless otherwise provided by the Constitution or by law, the procedure in the Supreme Court in original and in appealed cases shall be the same as in the Court of Appeals.

[43] *People v. Esparas*, 329 Phil. 339, 350 (1996).

- [44] *People v. Cornelio*, 148-A Phil., 375, 378 (1971).
- [45] See *Rollo*, pp. 271-281.
- [46] *Id.* at 145-146.
- [47] *Id.* at 206, 216.
- [48] TSN, 29 January 1997, pp. 40-41.
- [49] See TSN, 12 February 1997, pp. 8-9 where appellant Bonto testified that he lived two (2) kilometers away from Abes, three (3) kilometers distant from Silvano, Jr., from two (2) to (3) kilometers away from the Ybañez brothers, and three (3) kilometers away from Bumagat. See also TSN, 19 February 1997, p. 10, where Bonto admitted his house was only seven hundred (700) meters away from the place where the crime took place.
- [50] TSN, 26 October 1994, p. 12.
- [51] TSN, 7 April 1997, p. 44.
- [52] TSN, 12 February 1997, pp. 7-8.
- [53] TSN, 7 August 1996, p. 6.
- [54] TSN, 31 July 1996, p. 5.
- [55] *People v. Rios*, 389 Phil. 338, 347 (2000) citing *People v. Lagnas*, G.R. Nos. 102949-51, 28 May 1993, 222 SCRA 745, 757. See also *People v. Reception*, G.R. No. 94127, 1 July 1991, 198 SCRA 670, 677.
- [56] *People v. Gamboa, Jr.*, No. L-73463, 28 October 1986, 145 SCRA 289, 299; *People v. Pueblos*, No. L-32859, 24 February 1984, 127 SCRA 746, 754.
- [57] *People v. Vacal*, No. L-20913, 27 February 1969, 27 SCRA 24, 28.
- [58] *People v. Gapasin*, No. L-52017, 27 October 1986, 145 SCRA 178, 191.
- [59] *People v. Porcare*, No. L-37235, 5 February 1983, 120 SCRA 546; *People v. Nopia*, No. L-36297-99, 26 April 1982, 113 SCRA 599, 606; *People v. Boado*, No. L-44725, 31 March 1981, 103 SCRA 607, 614.
- [60] *People v. Dolar*, G.R. No. 100805, 24 March 1994, 231 SCRA 414, 423.
- [61] *People v. Arca*, G.R. No. 135857, 18 June 2003, pp. 10-11.
- [62] *People v. Bagsit*, G.R. No. 148877, 19 August 2003, pp. 7-8.
- [63] *People v. Colonia*, G.R. No. 138541, 12 June 2003, p. 10.
- [64] TSN, 7 April 1997, pp. 39-40.
- [65] TSN, 19 February 1997, p. 10.
- [66] TSN, 3 February 1997, p. 18.
- [67] TSN, 9 October 1996, pp. 14-15.
- [68] TSN, 18 November 1996, p. 4.
- [69] *Id.* at 9.
- [70] TSN, 14 October 1996, pp. 29-31.

[71] TSN, 9 October, 1996, p. 6.

[72] *People v. Solamillo*, G.R. No. 123161, 18 June 2003, p. 15 citing *People v. Del Rosario*, G.R. No. 131036, 20 June 2001, 359 SCRA 166, 173-174.

[73] REV. PENAL CODE, Art. 8.

[74] *People v. Quilaton*, G.R. No. 131835, 3 February 2000, 324 SCRA 670, 684.

[75] *People v. Del Rosario*, G.R. No. 127755, 14 April 1999, 305 SCRA 740, 755.

[76] *People v. Musa, Jr.*, G.R. No. 137042, 17 June 2003, p. 6, citing *People v. Givera*, G.R. No. 132159, 18 January 2001, 349 SCRA 513, 532.

[77] *People v. Sabadao*, G.R. No. 126126, 30 October 2000, 344 SCRA 432, 449-450 citing *People v. Nang*, G.R. No. 107799, 15 April 1998, 289 SCRA 16, 33-34; See also *People v. Cando*, G.R. No. 128114, 25 October 2000, 344 SCRA 330, 343 citing *People v. Robles*, G.R. No. 101335, 8 June 2000, 333 SCRA 107, 119.

[78] REV. PENAL CODE, Art. 63, par. 2.

[79] *People v. Narca*, G.R. No. 129217, 25 August 2000, 339 SCRA 76, 85.

[80] Exh. "J," Folder of Exhibits for the Prosecution. See also TSN, 16 October 1995, p. 12.

[81] *People v. Abrazaldo*, G.R. No. 124392, 7 February 2003, pp. 16-17.

[82] *People v. De la Tongga*, G.R. No. 133246, 31 July 2000, 336 SCRA 687, 700.

[83] G.R. No. 123161, 18 June 2003, pp. 22-23.

[84] *Supra*, note 80.

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