

THE PEOPLE OF THE PHILIPPINES, APPELLEE, VS. MANUEL DANIELA ALIAS MANUEL DE LA CRUZ @ TAGALOG AND JOSE BAYLOSIS Y BAISAC, APPELLANTS.

G.R. No. 139230. April 24, 2003

Ponente: CALLEJO, SR., J.

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CALLEJO, SR., J.:

Before the Court on automatic review is the Decision[1] dated March 31, 1997 of Branch 18 of the Regional Trial Court of Cebu City, in Criminal Case No. CBU-42044, convicting appellants Manuel Daniela and Jose Baylosis of robbery with homicide, sentencing them to death and directing them to pay, jointly and severally, to the heirs of the victim Ronito Enero, the sum of P Normal 0 false false false EN-PH X-NONE X-NONE 50,000 and to restitute to said heirs the cash and pieces of jewelry taken by them.

The Antecedents

Ronito Enero and his common-law wife Maria Fe Balo and their three children: May, 4 years old, Joan, 3 years old, and Ronito, Jr., 1 year old, resided in Sawang, Calero, Pasil, Cebu City. The couple eked out a living vending fish at the Pasil public market near their house. They employed Leo Quilongquilong, the cousin of Maria Fe, as helper in their business and Julifer Barrera, a “tomboy” as their househelp. Both lived with the couple. Manuel Daniela had been a “barkada” of Ronito in Dansalam, Davao City years back, while Imelda, Manuel’s wife, was Maria Fe’s friend and former classmate.

On March 28, 1996, Manuel and Jose Baylosis arrived in Cebu City and stayed in the house of Joel Colejara in Pardo. Manuel and Jose went to the market and met Maria Fe. The latter informed Manuel where she and Ronito lived. Since then, Manuel and Jose had been to the house of the couple and Manuel was able to borrow money from them in the amount of P Normal 0 false false false EN-PH X-NONE X-NONE /* Style Definitions */ table.MsoNormalTable {mso-style-name:"Table Normal"; mso-tstyle-rowband-size:0; mso-tstyle-colband-size:0; mso-style-noshow:yes; mso-style-priority:99; mso-style-parent:""; mso-padding-alt:0cm 5.4pt 0cm 5.4pt; mso-para-margin-top:0cm; mso-para-margin-right:0cm; mso-para-margin-bottom:10.0pt; mso-para-margin-left:0cm; line-height:115%; mso-pagination:widow-orphan; font-size:11.0pt; font-family:"Calibri","sans-serif"; mso-ascii-font-family:Calibri; mso-ascii-theme-font:minor-latin; mso-hansi-font-family:Calibri; mso-hansi-theme-font:minor-latin; mso-bidi-font-family:"Times New Roman"; mso-bidi-theme-font:minor-bidi; mso-fareast-language:EN-US;} 800.

At about 7:00 p.m. on March 30, 1996, Maria Fe was at the public market when she was asked by Roland Pedrejas alias “Potot” whether Manuel was already in their house. She replied that she did not know. Later that evening, Maria Fe, Ronito, Leo and Julifer had just taken their dinner when Manuel and Jose arrived. Manuel told Ronito that he wanted to borrow money from him and Maria Fe. The latter refused to lend Manuel the money but she was prevailed upon by Ronito. Manuel, Jose and Ronito then had a drinking spree in the sala. Maria Fe and Julifer went to sleep in the former’s bedroom while Leo slept in the sala.

At about midnight, Maria Fe woke up and told Ronito, Manuel and Jose to sleep because she had to leave at one o'clock early that morning. By then, Ronito was already inebriated. She then spread mat in the sala for Manuel and Jose to sleep on. She and Ronito then went to their room and slept.

At around 2:00 a.m. of March 31, 1996, Manuel, armed with a .38 caliber gun and holding a fluorescent lamp, entered the bedroom of Ronito and Maria Fe. He poked the said gun on Maria Fe. She woke up and attempted to stand up but Manuel ordered her to lie down. Jose, armed with a knife followed Manuel to the bedroom. The latter ordered Jose to tie the hands of Maria Fe behind her back and put a tape on her mouth. Jose complied. On orders of Manuel, Jose woke up Leo and brought him to the room. Jose tied the hands of Leo behind his back. Jose and Manuel then divested Maria Fe of her necklace, rings and earrings. Manuel demanded that she give them her money but Maria Fe told them that she had used her money to pay her partners in the fish vending business. Manuel and Jose did not believe Maria Fe. They ransacked the room but failed to find money. Julifer woke up but Manuel and Jose threatened to kill her if she shouted. The two tied Julifer's hands at her back. Manuel then threatened to explode the grenade tucked under his shirt and kill Maria Fe, her family and their househelps if she refused to surrender her money. Petrified, Maria Fe took the money from her waist pouch and gave the same to Manuel and Jose. Manuel took a blanket and ordered Jose to kill Ronito with it. Jose went to the kitchen, got a knife, covered Ronito with the blanket and sat on top of him then stabbed the latter several times. Manuel also stabbed Ronito on different parts of his body. Ronito could only groan like a dying pig. Manuel hit Ronito with the butt of his gun. Jose slit the throat of Ronito and took the latter's wristwatch and ring. Manuel then untied Julifer, removed her clothes and panties and then raped her. She could do nothing but cry. Manuel and Jose stayed in the house until 4:00 a.m. Before they left, Manuel and Jose told Maria Fe that they were acting on orders of Rolando Pedrejas, Joel Colejara, Grace Pabulacion and Juliet Capuno. They also warned her and Leo not to report the incident to the police authorities, otherwise they will kill them and their family. Leo and Maria Fe managed to untie themselves and reported the incident to Barangay Chairman Sergio Ocaña who conducted an on-the-spot investigation of the incident.

Dr. Jesus P. Cerna performed an autopsy on the cadaver and submitted his Necropsy Report:

POSTMORTEM FINDINGS

Normally developed, fairly nourished, male cadaver, in the state of rigor mortis. Pallor, marked, generalized; pupils, dilated. Livor [sic] mortis, brownish most prominent at the neck, shoulder blades, buttocks and calves.

Abrasions, brownish; chin, mid-anterior aspect, 1.0 x 1.0 cm.; face, right, 1.0 x 0.2 cm.; face, left, 1.5 x 1.0 cm.

Incised wound, gaping, mid-frontal area, 2.0 x 0.3 cm.

Lacerated wounds; forehead, right, 3.0 x 1.5 cm.; face, left, 1.0 x 0.3 cm.

Stab wound:

Triangular in shaped [sic] 2.0 x 1.0 x 1.cm; extremities sharp, edges, clean-cut; forehead, left, just above eyebrow; directed backward, downward and medially, involving the skin and the underlying soft tissues, making a punch-in fracture on the left frontal bone, attaining a depth of 3.0 cm. (fracture on the left frontal bone is 2.0 cm. in length and not triangular in shaped [sic], and did not involved [sic] the whole thickness of the bone).

Stab wounds:

Six in number[s], all elliptical in shaped [sic] and of varying sizes, three with a length of 1.0 cm. and the other three with a length of 0.7, 0.6 and 0.4 cm.; one extremity of the six stab wounds, rounded, while the other extremities were sharp, and all edges clean-cut; located at the neck, anterior aspect closed [sic] to each other;

all were directed backward, downward and then either laterally or medially, involving the skin and the underlying soft tissues, 3 stab wounds perforated the trachea and the other 3 stab wounds, incised the blood vessels, attaining depthness ranging from 1.5, 4.0, 4.5, 5.0 and 8.0 cms.

Stab wound:

Triangular in shaped [sic], 2.0 x 1.8 x 2.0 cm.. extremities sharp, edges clean-cut; right supra clavicular area, directed backward, downward and medially, involving the skin and the underlying soft tissues, perforating the oarta [sic], attaining an approximated depth of 11.0 cm.

Stab wounds:

Three in number[s], all elliptical in shaped [sic], of varying sizes ranging from 2.5, 2.0 and 1.2 cm., one extremity rounded, other extremities sharp, edges clean-cut; thoracic area, anterior aspect; one was directed backward, upward and laterally penetrating thoracic cavity, and perforating the heart, with a depth of 8.0 cm.; other stab wound was directed backward, upward and medially, penetrating thoracic cavity, perforating the heart, with a depth of 9.5 cm.; other stab wound was directed backward downward and medially, penetrating thoracic cavity, perforating the heart, with a depth of 11.0 cm.

Stab wound:

Elliptical, 1.8 cm. one extremity contused, other extremity sharp, edges clean-cut; arm, deltoid area; directed backward, upward and to the right, involving the skin and the underlying soft tissues, attaining a depth of 4.5 cm.

Stab wound

Two in number[s], both elliptical in shaped [sic], with sizes of 2.0 and 1.0 cm.; one extremity contused, other extremity sharp, edges clean-cut; thoracic area, right anterior aspect; one was directed backward, downward and medially, penetrating thoracic cavity, incising the upper lobe of the right lung, attaining a depth of 10.0 cm.; other stab wound was directed backward then upwards and medially, involving the skin and the underlying soft tissues, penetrating thoracic cavity, perforating the heart, attaining an approximated depth of 12.0 cm.

Stab wound

Four in number[s], all elliptical in shaped [sic], of varying sizes, ranging from 1.5, 1.7, 1.5 and 2.0 cm.; one of the extremities were [sic] sharp, the others were contused, edges clean-cut; located at the thoraco-abdominal area, anterior aspect; directed backward, then either downward and upwards and medially or laterally; one penetrated abdominal cavity and perforated the stomach, with a depth of 9.0 cm.; the other three incised the sternum, and non-perforating with depthness ranging from 5.0, 2.0 and 1.5 cms.

Stab wound

Elliptical, 1.3 cm. long, one extremity contused, other extremity, sharp, edges clean-cut; abdomen, left anterior aspect; directed backward, upwards and medially, penetrating abdominal cavity, perforating small intestine, attaining an approximated depth of 9.0 cm.

Stab wound

Elliptical, 1.5 cm. long, one extremity contused, other extremity sharp, edges clean-cut; abdomen, left antero-lateral aspect; directed backward, upward and medially, involving the skin and the underlying soft tissues only, attaining a depth of 3.5 cm., non-perforating.

Stab wounds

Elliptical, 2.0 cm. long, one extremity contused, other extremity sharp, edges clean-cut; back, thoracic area, mid-posterior aspect; directed forward, downwards and to the left, penetrating left thoracic cavity, perforating the heart, attaining a depth of 15.0 cm.

Stab wound

Elliptical, 3.2 cm. long, one extremity contused, other extremity sharp, edges clean-cut; back, left scapular area; directed forward, downward and lateral, involving the skin and the underlying soft tissues only, attaining a depth of 4.0 cm.

Brain and other visceral organs, pale;

Hemothorax, approximately 2000 cc.

Hemoperitoneum, approximately 500 cc.

Stomach, full of food particles (positive for alcoholic odor).

CAUSE OF DEATH:

Hemorrhage, acute, severe, secondary to multiple stab wounds, forehead, neck, chest, abdomen and back. [2]

Dr. Cerna signed the Certificate of Death of Ronito.[3]

On July 17, 1996, an Information was filed against Manuel and Jose in the Regional Trial Court of Cebu City, which reads:

That on or about the 31st of March, 1996, about 2:00 a.m., in the City of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the said accused, conniving and confederating together and mutually helping each other, armed with bladed weapons and handguns, with deliberate intent and with intent to kill, did then and there attack, assault and use personal violence upon one Ronito Enero by stabbing him on the vital parts of his body with said bladed weapons, thereby inflicting upon him physical injuries thus causing his instantaneous death, and with intent of gain, did then and there take and carry away therefrom the following:

a)

1 gold necklace worth

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b)

1 pair of gold earrings

1,100.00

c)

2 gold rings worth

3,800.00

d)

cash amounting to.....

30,000.00

e)

1 Seiko wristwatch

900.00

f)

1 Seiko wristwatch

1800.00

g)

1 gold ring worth

900.00

valued in all at P Normal 0 false false false EN-PH X-NONE X-NONE /* Style Definitions */
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45,500.00, belonging to Ronito Enero and Maria Fe Balo, to the damage and prejudice of the owners in the
amount of P Normal 0 false false false EN-PH X-NONE X-NONE /* Style Definitions */
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45,500.00, Philippine Currency.

CONTRARY TO LAW.[4]

When arraigned on October 17, 1996, both accused, assisted by counsel, pleaded not guilty.[5]

Thereafter trial ensued. The prosecution presented Dr. Cerna as its first witness. It then presented Maria Fe as its second witness. During the trial on February 4, 1997, Manuel and Jose offered to withdraw their plea of not guilty, and to enter a plea of guilty to the crime charged in the information. The prosecution agreed. They were then rearraigned and pleaded guilty to the crime charged in the information.[6]

Nevertheless, the prosecution continued presenting its evidence. It presented Barangay Captain Ocaña, who testified that when he talked to Maria Fe and Julifer in their house, Maria Fe told him that Manuel and Jose had divested her money and personal belongings and killed her husband Ronito. Julifer also told him that she had been raped by two of the malefactors. After Sergio's testimony, the prosecution manifested that Leo Quilongquilong,

one of the victims, had already left for Davao City after the incident, and that Julifer Barrera had refused to take the witness stand for fear for her life, and for that reason, it will no longer present them as witnesses. The prosecution thereafter rested its case.

The Defenses and Evidence of Both Accused

When he testified, Manuel admitted having killed Ronito. He however claimed that he stabbed Ronito in self-defense and in defense of Jose. He also said that he, Potot, Ronito and Jojo, the younger brother of Maria Fe, had been engaged in robberies in Davao City. Sometime in September 1995, the four robbed a person of P50,000. However, Manuel failed to get his share of the loot while Ronito, Jojo and Potot got theirs. Manuel was bitter. He later learned in December 1995 that Ronito and Maria Fe had left Davao City and settled in Cebu City. On March 26, 1996, Manuel and Jose arrived in Cebu City to contact Ronito and to get his share of the loot. Manuel met Ronito on March 29, 1996 at the jai-alai. Ronito told Manuel to visit him where they can talk. Manuel agreed. In the evening on March 30, 1996, Manuel and Jose arrived in the house of Ronito. Manuel wanted to get his share of the loot from Ronito. Manuel, Jose and Ronito had a drinking spree. However, at about two o'clock at dawn, the next morning, Manuel and Ronito had an altercation when Manuel demanded that Ronito give him his share of the loot. Ronito was peeved and told Manuel that he had long given him his share through a friend. Ronito whipped out a knife and stabbed Manuel. The latter tried to wrest the knife from Ronito but failed. However, Jose grappled with Ronito and managed to wrest possession of the knife. Jose then gave the knife to Manuel who stabbed Ronito with it.

Manuel denied raping Julifer, and divesting Ronito and Maria Fe of their valuables. Jose did not anymore testify. His counsel informed the trial court that the testimony of Jose would only corroborate the testimony of Manuel.

On March 31, 1997, the trial court rendered a Decision, the decretal portion of which reads as follows:

WHEREFORE, in view of all the foregoing considerations, accused Manuel Daniela alias Manuel de la Cruz @ Tagalog and Jose Baisac Baylosis are found guilty beyond reasonable doubt of the crime of Robbery with Homicide and they are hereby sentenced to suffer the supreme penalty of DEATH to be carried out in the manner prescribed by law. The accused are further directed to pay jointly and severally, to the heirs of the victim the sum of P 50,000.00 and to reconstitute to the heirs the cash & pieces of jewelry taken by them as aforementioned and to pay the costs.

SO ORDERED. [7]

The trial court declared that Manuel and Jose having pleaded guilty to the crime charged in the information, the prosecution was deemed to have proven their guilt of the crime charged, the remaining matter still to be ascertained was the presence of any modifying circumstances.

Accused Manuel and Jose, now appellants, assail the decision of the trial court and insist that:

I

THE TRIAL COURT ERRED IN IMPOSING THE SUPREME PENALTY OF DEATH WHEN THE GUILT OF THE ACCUSED-APPELLANTS FOR THE CRIME OF ROBBERY WITH HOMICIDE WAS NOT

PROVEN BEYOND REASONABLE DOUBT.

II

THE TRIAL COURT ERRED IN IMPOSING THE SUPREME PENALTY OF DEATH WHEN THE AGGRAVATING CIRCUMSTANCES OF NIGHTTIME AND DWELLING WERE NOT DULY PROVEN BY THE PROSECUTION.

III

RULE 110, SECTIONS 8 AND 9, OF THE REVISED RULES OF CRIMINAL PROCEDURE, AS AMENDED, DECEMBER 1, 2000, SHOULD BE GIVEN RETROACTIVE EFFECT IN THE INTEREST OF JUSTICE.[8]

Anent the first assigned error, the appellants contend that their plea of guilty to the crime charged in the information was improvidently made. When they pleaded guilty, they did so only for homicide but not for robbery. Neither did appellant Manuel plead guilty to rape. They assert that their plea of guilty to the crime charged in the information should be set aside. The trial court erred in convicting them of the charge on the basis solely on their improvident plea of guilty. The Office of the Solicitor General (OSG) agrees with the contention of the appellants that their plea of guilty to the crime charged in the information was improvidently made. Nevertheless, it contends that there is no more need for the Court to still remand the case to the trial court as their conviction for the crime charged is warranted by the evidence adduced by the prosecution independent of their plea of guilty.

We agree with the appellants that their plea of guilty to the crime charged was improvidently made. Section 3, Rule 116 of the Revised Rules of Criminal Procedure reads:

SEC. 3. Plea of guilty to capital offense; reception of evidence. – When the accused pleads guilty to a capital offense, the court shall conduct a searching inquiry into the voluntariness and full comprehension of the consequence of his plea and require the prosecution to prove his guilt and the precise degree of culpability. The accused may also present evidence on his behalf.

The felony of robbery with homicide is a capital offense, the imposable penalty therefor being reclusion perpetua to death.

The *raison d'être* behind the rule is that courts must proceed with caution where the punishable penalty is death for the reason that the execution of such a sentence is irrevocable and experience has shown that innocent persons have at times pleaded guilty. Improvident plea of guilty on the part of the accused when capital crimes are involved should be avoided since he might be admitting his guilt before the court and thus forfeit his life and liberty without having fully comprehended the meaning and import and consequences of his plea.[9] Under this rule, three things are enjoined upon the trial court, namely:

(1) the court must conduct a searching inquiry into the voluntariness of the plea, and the accused's full comprehension of the consequences thereof; (2) the court must require the prosecution to present evidence to prove the guilt of the accused and the precise degree of his culpability; and (3) the court must ask the accused if he desires to present evidence on his behalf and allow him to do so if he desires.[10]

As explained by the Court in *People v. Alicando*,[11] the searching questions must focus on (1) the voluntariness of the plea; and (b) the full comprehension of the accused of the consequences of the plea. As elaborated on by the Court in *People v. Nadera*,[12] the trial court -

The warnings given by the trial court in this case fall short of the requirement that it must make a searching inquiry to determine whether accused-appellant understood fully the import of his guilty plea. As has been said, a mere warning that the accused faces the supreme penalty of death is insufficient. For more often than

not, an accused pleads guilty upon bad advice or because he hopes for a lenient treatment or a lighter penalty. The trial judge must erase such mistaken impressions. He must be completely convinced that the guilty plea made by the accused was not made under duress or promise of reward. The judge must ask the accused the manner the latter was arrested or detained, and whether he was assisted by counsel during the custodial and preliminary investigation. In addition, the defense counsel should also be asked whether he conferred with the accused and completely explained to him the meaning and the consequences of a plea of guilt. Furthermore, since the age, educational attainment and socio-economic status of the accused may reveal insights for a proper verdict in the case, the trial court must ask questions concerning them. . . . [13]

In this case, the certificate of arraignment on record states that when the case was called for trial on February 4, 1997, the appellants were called by the trial court and were informed of the nature of the charge against them. The trial court propounded questions on the appellants and the latter answered the questions. Forthwith, the appellants changed their former plea of not guilty to that of guilty.[14] However, there is no record of what questions were asked by the trial court, and what answers were given by them, or whether the court explained to the appellants the nature of the crime with which they were charged, and that they may be sentenced to death. It cannot be determined whether the questions of the trial court were searching. The records do not even show if the trial court explained to the appellants the meaning and legal effect of mitigating and aggravating circumstances in the commission of the crime, or if the appellants were asked why they were changing their plea from not guilty to guilty. Clearly then, the plea of guilty of the appellants was improvident; hence, inefficacious. Their conviction for the crime charged cannot be based solely on their plea of guilty to said crime.

The trial court convicted the appellants of robbery with homicide on the basis of their plea of guilty during their rearraignment.[15] Ordinarily, the case should be remanded to the trial court for the prosecution and the appellants to adduce their respective evidences. However, the records show that despite the plea of guilty of the appellants, the prosecution adduced its evidence. The appellants likewise adduced their evidence to prove their defenses. The Court will resolve the case on its merits independent of the plea of guilty of the appellants rather than remand the case to the trial court.[16]

The Crime Committed by the Appellants

The appellants aver that the prosecution failed to prove the crime of robbery with homicide with which they were charged. Maria Fe was not a credible witness; her testimony is barren of probative weight. They contend that as claimed by Maria Fe, the principal witness for the prosecution, the intention of the appellants in going to the house of Ronito and Maria Fe was merely to borrow money from them and not to rob them of their personal belongings. The prosecution even failed to prove that the appellants robbed Maria Fe of money and jewelry. Even if it is assumed that they robbed Maria Fe of money and jewelry, however, they are not liable for robbery with homicide. That the appellants robbed the couple of their belongings after borrowing money from Ronito and Maria Fe, is not determinative of the special complex crime of robbery with homicide.

On the other hand, the OSG contends that the prosecutor mustered the required quantum of evidence to prove the constitutive elements of robbery with homicide. Maria Fe is credible and her testimony entitled to probative weight. Although the inept intention of the appellants in going to the house of Ronito and Maria Fe was to borrow money, however, it is equally true that they intended to rob the victims of their money and personal belongings and kill Ronito in the process. The evidence on record shows that the object of the appellants was to rob the victim of their money and personal properties and kill Ronito on the occasion of the robbery. The OSG cites the ruling of this Court in *United States vs. Villoriente*. [17]

We agree with the OSG. Article 294 of the Revised Penal Code as amended by Republic Act 7659 reads:

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

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

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

The law was taken from the Spanish Penal Code which reads:

1. O. Con la pena de reclusion perpetua a muerte, cuando con motivo o con ocasion del robo resultare homicidio.

The elements of the crime are as follows:

- (1) the taking of personal property is committed with violence or intimidation against persons;
- (2) the property taken belongs to another;
- (3) the taking is done with animo lucrandi; and
- (4) by reason of the robbery or on the occasion thereof, homicide is committed.[18]

A conviction for robbery with homicide requires certitude that the robbery is the main purpose and objective of the malefactor and the killing is merely incidental to the robbery. The animo lucrandi must precede the killing. If the original design does not comprehend robbery, but robbery follows the homicide either as an afterthought or merely as an incident of the homicide, then the malefactor is guilty of two separate crimes, that of homicide or murder and robbery, and not of the special complex crime of robbery with homicide, a single and indivisible offense.[19] It is the intent of the actor to rob which supplies the connection between the homicide and the robbery necessary to constitute the complex crime of robbery with homicide.[20]

However, the law does not require that the sole motive of the malefactor is robbery and commits homicide by reason or on the occasion thereof.[21] In *People vs. Tidula, et al.*, [22] this Court ruled that even if the malefactor intends to kill and rob another, it does not preclude his conviction for the special complex crime of robbery with homicide. In *People v. Damaso*, [23] this Court held that the fact that the intent of the felons was tempered with a desire also to avenge grievances against the victim killed, does not negate the conviction of the accused and punishment for robbery with homicide.

A conviction for robbery with homicide is proper even if the homicide is committed before, during or after the commission of the robbery. The homicide may be committed by the actor at the spur of the moment or by mere accident. Even if two or more persons are killed and a woman is raped and physical injuries are inflicted on another, on the occasion or by reason of robbery, there is only one special complex crime of robbery with homicide. What is primordial is the result obtained without reference or distinction as to the circumstances, cause, modes or persons intervening in the commission of the crime.[24]

Robbery with homicide is committed even if the victim of the robbery is different from the victim of homicide, as long as the homicide is committed by reason or on the occasion of the robbery.[25] It is not even necessary that the victim of the robbery is the very person the malefactor intended to rob.[26] For the conviction of the special complex crime, the robbery itself must be proved as conclusively as any other element of the crime.[27]

In this case, the prosecution proved through the testimony of Maria Fe that the appellants threatened to kill her and her family and robbed her of her money and jewelry and Ronito and Leo's pieces of jewelry:

Q

At about 2:00 A.M. of the following day March 31, 1996 what happened?

A

This Manuel Daniela pushed the door of our room.

Q

And what did he do after he pushed the door of your room?

A

I was awakened and then I asked him what is it Log. Referring to Manuel Daniela. [sic] alias Tagalog.

Q

What did you see in Tagalog when he pushed the door open?

A

When Manuel Daniela alias Tagalog entered our room he poked his handgun caliber 38 on me at that time because he was bringing a gun.

Q

What is this caliber 38?

A

A pistol, caliber 38 weapon.

Q

But how did you know it was a 38 caliber if you do not know the weapon?

A

Because I . . . this caliber 38 he was brining.

Q

And you said he was bringing a kerosene lamp?

A

Yes.

Q

What did he do with the kerosene lamp?

A

When he poked his firearm towards me I stood up and then Manuel Daniela told me to go back to lie down. At that time Jose Baylosis entered the room.

Q

Did you lie down following the order of Manuel Daniela?

A

Yes, maam. [sic]

Q

Your [sic] said that Jose Baylosis entered the room what did Jose Baylosis do while you were already lying down?

A

Manuel Daniela order [sic] Jose Baylosis to tie me.

Q

How were you tied?

A

He extended my two hands but Tagalog said that it is not the way to tie her. So they placed my hands at the back and they put a masking tape.

Q

Aside from your hands what were tied?

A

Only my hands were tied but Manuel Daniela ordered Jose Baylosis to let Leo Quilongquilong my cousin to get inside the room.

Q

Did Jose Baylosis comply [sic] with the instruction of Manuel Daniela to let your cousin Leo Quilongquilong to get inside the room?

A

Yes, maam.

Q

Did Leo Quilongquilong get inside your room/

A

Yes, maam.

Q

What did they do with Leo Quilongquilong at the time Leo Quilongquilong was already inside the room?

A

They also tied Leo Quilongquilong by extending his both hands towards them and they also ordered to place his hands at his back.

Q

Is that how Leo Quilongquilong was tied?

A

Yes, maam.

Q

After you and Leo Quilongquilong were tied what did Manuel Daniela do?

A

They asked money from me but I did not tell them and so they got my jewelries [sic].

Q

What jewelries [sic] were taken from you?

A

Necklace.

Q

How much was the cost?

A

P Normal 0 false false false EN-PH X-NONE X-NONE 7,000.00.

Q

Was it a gold, silver or what kind of metal?

A

Chinese gold.

Q

Where was it placed?

A

They took it from my neck.

Q

Who of the two took your gold necklace from your neck?

A

Jose Baylosis.

Q

After taking the gold necklace from your neck what else did Jose Baylosis do?

A

Jose Baylosis also removed my gold ring?

Q

How many rings?

A

2.

Q

How much is the value of these two rings?

A

P3,800.00.

Q

From where did Jose Baylosis take these two gold rings?

A

From my fingers.

Q

While your hand were tied at the back?

A

Yes, maam.

Q

Aside from the two rings and one necklace what other piece of jewelries [sic] were taken from you by Jose Baylosis?

A

My Chinese gold earrings.

Q

How much was the value of the Chinese gold earrings?

A

P Normal 0 false false false EN-PH X-NONE X-NONE 1,100.00.

Q

From where did Jose Baylosis get your Chinese gold earrings? from me [sic]

A

From my ears.

Q

While Jose Baylosis was divesting you these pieces of jewelry what did Manuel Daniela do?

A

Manuel Daniela keep on poking his firearm towards me and his left hand holding a hand grenade, and told me not to shout.

Q

After the two accused were able to divest you of your pieces of jewelry what else did they do?

A

While Manuel Daniela keep on poking his firearm toward me Manuel Daniela insisted that the moeny [sic] would be given and I told them we have no money because my money was paid for the fish and also to my partner of fish vending but they did not believe.

Q

Since Manuel Daniela did not believe you that you have no money what did Manuel Daniela do?

A

They ransacked our room by scattering our clothes looking for money.

Q

Was he able to find your money?

A

No maam.

Q

What did he do as he did not find anything after scattering your clothes?

A

Manuel Daniela and Jose Baylosis told me to give money so they will not harm us.

Q

What did you do?

A

That time my cousin Leo woke yo [sic] and gave the money to them but Leo also told [sic] if we will give you the money then we will ha [sic] no more capital for our business.

Q

And what did you do finally?

A

Later on, we decided to gather [sic] with my cousin to give the money in order they will not be killed.

Q

Did you give the money?

A

Yes, maam because my money was inside the box which was placed inside, it was a waist pouch.

Q

And what material was your pouch made of which contained the money?

A

It was made of cloth.

Q

How much was the content of your pouch which you said was placed inside the map.

A

P Normal 0 false false false EN-PH X-NONE X-NONE 30,000.00 and a wrist watch.

Q

And how much is the c[v]alue of the wrist watch?

A

P Normal 0 false false false EN-PH X-NONE X-NONE 900.00.

Q

Who got the pouch under the map?

A

I was the one pushing out the pouch from over the map towards Tagalog.

Q

During this time when Manuel Daniela and Jose Baylosis were divesting you of pieces of jewelry and money what was your husband Ronito doing?

A

At that time my husband Ronito was sleeping. Manuel Daniela took a blanket and then Manuel Daniela ordered Jose Baylosis to kill my husband and Jose Baylosis took a blanket and covered the mouth of my husband and placed himself on top of the body of my husband and stabbed.

COURT:

Q

With what weapon?

A

Kitchen knife.

COURT:

Proceed.

ATTY. DALAWAPU:

Q

Who owned that kitchen knife?

A

That was taken from our kitchen.

Q

So you owned the knife?

A

Yes we owned.

Q

And then after Jose Baylosis stabbed your husband several times that did Manuel Daniela do?

A

While Jose Baylosis stabbed several times my husband mu [sic] husband shouted, “aray” and then I attempted to stand up and then Manuel Daniela took over and place himself on top of my husband and he also stabbed my husband several times using a batangas knife. At that time Manuel Daniela was on top of my husband Jose Baylosis also pulled the legs of my husband and he was stabbed on the lower oar [sic] of the body.

INTERPRETER:

Witness pointing to her abdomen.

COURT:

Q

So your husband was never able to stand?

A

No my husband was never able to stand up because they helped each other in stabbing him several times.

ATTY. DALAWAPU:

Q

At the time that Jose Baylosis and Manuel Daniela were stabbing your husband what were you doing?

A

While they were stabbing mu [sic] husband I and my cousin could not say anything because they threatened to explode the hand grenade they were holding. We were just on the side of the room tied and looking them stabbing

my husband because they threatened to explode the hand grenade if we should [sic] for help.

Q

How about Juliefer Barrera your helper what was she doing at this time that Jose Baylosis and Manuel Daniela were stabbing your husband?

A

Our helper who slept in the bed was awakened and while she was awakened Jose Baylosis and Manuel Daniela approached her and told not to shout and the her hands were tied.

Q

Do you mean to tell this Honorable Court that Manuel Daniela and Jose Baylosis stabbed and killed your husband after they were able to get your pieces of jewelry from your person and the pouch from under the map which contained the sum of P Normal 0 false false false EN-PH X-NONE X-NONE /* Style Definitions */ table.MsoNormalTable {mso-style-name:"Table Normal"; mso-tstyle-rowband-size:0; mso-tstyle-colband-size:0; mso-style-noshow:yes; mso-style-priority:99; mso-style-parent:""; mso-padding-alt:0cm 5.4pt 0cm 5.4pt; mso-para-margin-top:0cm; mso-para-margin-right:0cm; mso-para-margin-bottom:10.0pt; mso-para-margin-left:0cm; line-height:115%; mso-pagination:widow-orphan; font-size:11.0pt; font-family:"Calibri","sans-serif"; mso-ascii-font-family:Calibri; mso-ascii-theme-font:minor-latin; mso-hansi-font-family:Calibri; mso-hansi-theme-font:minor-latin; mso-bidi-font-family:"Times New Roman"; mso-bidi-theme-font:minor-bidi; mso-fareast-language:EN-US;} 30,000.00 together with your Seiko watch?

A

Yes, mam [sic].

COURT:

Q

What time was it at the time your husband was stabbed several times by both Daniel and Jose?

A

About 2:00 o'clock dawn the following day.

ATTY. DALAWAPU:

Q

Ma. Fe after Jose Baylosis and Manuel Daniela stabbed Ronito what else did they do?

A

After Jose Baylosis and Manuel Daniela killed my husband Manuel Daniela told me that there was somebody who ordered them to kill my husband and then I told them if you will kille [sic] me what will happene [sic] to my three small children who will support them and also who willsupport [sic] my parents because they depend for my support.

Q

What did Manuel Daniela say after you told them this?

A

Manuel Daniela said that I would be killed. When Manuel Daniela was about to stab me my husband also groaned three times like a dying pig and then this Jose Baylosis and Manuel Daniela immediately went back to my husband and they stabbed my husband again several times and then Manuel Daniela strucked [sic] the head of my husband with the bat of the firearm while Jose Baylosis stabbed my husband in the neck, made a slit on the neck with the use of the knife to ensure that he would be deed [sic]. In fact, the forehead of my husband was broken as a result of the striking of the bat of the firearm.

ATTY. DALAWAMPU:

I would like to make it of record from the very start that the witness related here how both accused divested her of the pieces of jewelry and money and killed dead [sic] her husband she keep on crying.

COURT:

Before this Honorable Court's question.

Q

Can you still go on your testimony despite your feelings?

A

Yes, Your Honor.

COURT:

So, let's proceed.

ATTY. DALAWAMPU:

Q

After they stabbed your husband again what did they do?

A

They stabbed again my husband and strucked [sic] the head of my husband and they went back to me and saying let us kill them Bay because they are very noisy.[28]

It may be true that the original intent of appellant Manuel was to borrow again money from Ronito and Maria Fe but later on conspired with Jose and robbed the couple of their money and pieces of jewelry, and on the occasion thereof, killed Ronito. Nonetheless, the appellants are guilty of robbery with homicide. In *People v. Tidong*, [29] this Court held that the appellant was guilty of robbery with homicide even if his original intention was to demand for separation pay from his employer and ended up killing his employer in the process:

The defense argues that appellant never had the original design to rob when he went to the Co compound. That may be so. The compound of the Cos is fenced and the only entrance is through the gate with a security guard.

It was only 7:00 o'clock in the evening and a number of people were still awake, hardly the proper occasion for staging a successful robbery. Notable too is the fact that the amount recovered from appellant was only in the amount of the separation pay which he demanded, leading to the inference that perhaps appellant had no original intent to rob the Cos.

Nonetheless, even if there was no original design to commit robbery, appellant is still liable for robbery if at the time of the taking of the personal property of another with violence or intimidation there was intent to gain. Although the Court gives considerable weight to the theory of the prosecution, we are not inclined to entirely do away with the version of the defense, especially with regard to his claim that he went to the Co compound to demand his separation pay. Although disputed by the Cos, it is possible that appellant believed, rightly or wrongly, that he had the right to a separation pay.

The Proper Penalty of Appellants

The trial court sentenced both appellants to death on its finding that the robbery with homicide was aggravated by nighttime and dwelling. It appreciated the plea of guilty as a mitigating circumstance in favor of the appellants.

The trial court correctly appreciated dwelling as an aggravating circumstance against the appellants. There was no provocation on the part of Ronito and Maria Fe. The crime was committed in their dwelling. This Court held that dwelling is aggravating because of the sanctity of privacy the law accords to human abode. He who goes to another's house to hurt him or do him wrong is more guilty than he who offends him elsewhere.[30] However, dwelling is not aggravating in this case as it was not alleged in the amended information. Under Section 9, Rule 10 of the Revised Rules of Court, aggravating circumstances must be alleged in the information[31] and proved otherwise, even if proved but not alleged in the information, the same shall not be considered by the Court in the imposition of the proper penalty on the accused. Although the rule took effect only on December 1, 2000, however, the same may be applied retroactively.[32] The crime was committed at nighttime. However, there is no evidence that the appellants took advantage of the darkness of the night in committing the crime or that nighttime facilitates the commission of the crime. Indeed, the evidence on record shows that when appellant Manuel barged into the room of Maria Fe and Ronito, he was holding a kerosene lamp.[33] The appellants are not entitled to the mitigating circumstance of plea of guilty[34] on the finding of the Court that the plea of guilty of the appellants was improvidently made. Besides, when the appellants changed their plea, the prosecution had already commenced presenting its evidence.

The Civil Liabilities of Appellants

The trial court ordered the appellants to pay in solidum to the heirs of Ronito the amount of P Normal 0 false false false EN-PH X-NONE X-NONE 50,000. However, although Maria Fe testified, the trial court did not award moral damages to said heirs. Neither did the trial court award exemplary damages. The trial court ordered the appellants to return to said heirs the pieces of jewelry taken by them but the trial court failed to specify or describe in its decision the said pieces of jewelry. Maria Fe testified that the appellants took her chinese gold necklace worth P Normal 0 false false false EN-PH X-NONE X-NONE 7,000; two gold rings worth P Normal 0 false false false EN-PH X-NONE X-NONE 3,000; chinese gold earring worth P Normal 0 false false false EN-PH X-NONE X-NONE 1,000; wristwatch worth P Normal 0 false false false EN-PH X-NONE X-NONE 900; and cash money in the amount of P Normal 0 false false false EN-PH X-NONE X-NONE 30,000 and that the appellants took the gold ring of Ronito worth P Normal 0 false false false EN-PH X-NONE X-NONE 900, and his wristwatch worth P Normal 0 false false false EN-PH X-NONE X-NONE 1,800. However, the prosecution failed to adduce documentary evidence to prove the acquisition cost of the pieces of jewelry taken from Maria Fe and Ronito. Neither is there any documentary evidence to prove that Maria Fe had P Normal 0 false false false EN-PH X-NONE X-NONE 30,000 inside her pouch. Nevertheless, the Court has to modify the decision of the trial court.

Conformably with current jurisprudence, the heirs of Ronito Enero are entitled to moral damages in the amount of P Normal 0 false false false EN-PH X-NONE X-NONE 50,000[35] and exemplary damages in the amount of P Normal 0 false false false EN-PH X-NONE X-NONE 25,000.[36] Under Article 105 of the Revised Penal Code,[37] the appellants are obliged to return to Maria Fe the pieces of jewelry they stole from her and to the heirs of Ronito the wristwatch and ring the appellants took from Ronito, whenever possible, with allowance for any deterioration or diminution of value as determined by the trial court. Under Article 106[38] of the Revised Penal Code, if the appellants can no longer return the articles, they are obliged to make reparation for the price of the pieces of jewelry if they can no longer return the same taking into account the price and the special sentimental value thereof to the victims. Under Article 1268[39] of the New Civil Code, the appellants are not exempted from the payments of the price of the stolen articles even if the same are lost, whatever be the cause of the loss, unless the things having been offered to the owners thereof, the former refused to receive the same without any valid cause.

The Verdict of the Court

IN THE LIGHT OF ALL THE FOREGOING, the Decision of the Regional Trial Court of Cebu City, Branch 18, in Criminal Case No. CBU-42044, is AFFIRMED with MODIFICATION. Appellants Manuel Daniela and Jose Baylosis are found guilty beyond reasonable doubt of robbery with homicide defined in Article 294, paragraph 1 of the Revised Penal Code, as amended and sentenced to reclusion perpetua. They are ordered to return to Maria Fe her chinese gold necklace, two rings, chinese gold earrings and wristwatch, and to return to the heirs of Ronito Enero his gold ring and wristwatch and if they fail to return the said pieces of jewelry to Maria Fe and the heirs of Ronito Enero, respectively, they are ordered to pay in solidum to Maria Fe and said heirs the value of the said pieces of jewelry to be determined by the trial court. The appellants are ordered to pay in solidum to the heirs of Ronito Enero P50,000 as civil indemnity and P Normal 0 false false false EN-PH X-NONE X-NONE /* Style Definitions */ table.MsoNormalTable {mso-style-name:"Table Normal"; mso-tstyle-rowband-size:0; mso-tstyle-colband-size:0; mso-style-noshow:yes; mso-style-priority:99; mso-style-parent:""; mso-padding-alt:0cm 5.4pt 0cm 5.4pt; mso-para-margin-top:0cm; mso-para-margin-right:0cm; mso-para-margin-bottom:10.0pt; mso-para-margin-left:0cm; line-height:115%; mso-pagination:widow-orphan; font-size:11.0pt; font-family:"Calibri","sans-serif"; mso-ascii-font-family:Calibri; mso-ascii-theme-font:minor-latin; mso-hansi-font-family:Calibri; mso-hansi-theme-font:minor-latin; mso-bidi-font-family:"Times New Roman"; mso-bidi-theme-font:minor-bidi; mso-fareast-language:EN-US;} 50,000 as moral damages in line with current jurisprudence.

SO ORDERED.

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

Vitug, J., in the result.

Quisumbing, J., on official leave.

[1] Penned by Judge Galicano C. Arriesgado.

[2] Exhibit "A."

[3] Exhibit "B."

[4] Records, pp. 1-2.

[5] Id., at 12.

[6] Id., at 51.

[7] Id., at 86-87.

[8] Rollo, p. 63.

[9] People v. Arizapa, 328 SCRA 214 (2000).

[10] People v. Nadera, Jr., 324 SCRA 490 (2000).

[11] 251 SCRA 293 (1995).

[12] See note 10, supra.

[13] Id.

[14] Records, p. 51.

[15] Id., at 52.

[16] People v. Hermoso, 343 SCRA 567 (2000).

[17] 30 Phil. 59 (1915).

[18] People v. Tidula, 292 SCRA 596 (1998).

[19] People v. Salazar, 277 SCRA 67 (1997).

[20] People v. Manuel, 44 Phil. 333 (1922).

[21] People v. Alberca, 257 SCRA 613 (1996).

[22] Supra.

[23] 86 SCRA 330 (1978).

[24] People v. Mangulabnan, 99 Phil 992 (1956), citing Decision of the Spanish Supreme Court, dated January 12, 1889, cited in Cuello Calon's Codigo Penal, pp. 501-502.

[25] Id.; People v. Ga, 186 SCRA 790 (1990); People v. Balanag, 236 SCRA 474, (1994) cited in People v. Alberca, supra.

[26] See note 21, supra.

[27] People v. Aquino, 329 SCRA 247 (2000); People v. Legaspi, 331 SCRA 95 (2000).

[28] TSN, 13 March 1997, pp. 7-13.

[29] 225 SCRA 324 (1993).

[30] People v. Paraiso, 319 SCRA 422 (1999).

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

judgment.

[32] People v. Mauricio, 353 SCRA 114 (2000).

[33] People v. Meren, 311 SCRA 113 (1999).

[34]... 7. That the offender had voluntarily surrendered himself to a person in authority or his agents, or that he had voluntarily confessed his guilt before the court prior to the presentation of the evidence for the prosecution.

[35] People v. Pajatol, 368 SCRA 674 (2001).

[36] People v. Catubig, 363 SCRA 621 (2001); People v. Liad, 355 SCRA 11 (2001).

[37] ART. 105. Restitution – How made. - The restitution of the thing itself must be made whenever possible, with allowance for any deterioration, or diminution of value as determined by the court.

The thing itself shall be restored, even though it be found in the possession of a third person who has acquired it by lawful means, saving to the latter his action against the proper person who may be liable to him.

This provision is not applicable in case in which the thing has been acquired by the third person in the manner and under the requirements which, by law, bar an action for its recovery.

[38] ART. 106. Reparation – How made. - The court shall determine the amount of damage, taking consideration the price of the thing, whenever possible, and its special sentimental value to the injured party, and reparation shall be made accordingly.

[39] Art. 1268. When the debt of a thing certain and determinate proceeds from a criminal offense, the debtor shall not be exempted from the payment of its price, whatever may be the cause for the loss, unless the thing having been offered by him to the person who should receive it, the latter refused without justification to accept it.

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