

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. LITO HERNANDEZ, APPELLANT.

G.R. No. 139697. June 15, 2004

Ponente: CALLEJO, SR., J.

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CALLEJO, SR., J.:

Before us on automatic appeal is the Decision[1] of the Regional Trial Court of Lemery, Batangas, Branch 5, in Criminal Case No. 13-95, convicting the appellant of the special complex crime of robbery with homicide, and sentencing him to suffer the penalty of “reclusion perpetua to death.”

The Information charging the appellant with the aforesaid offense alleges as follows:

That on or about the 19th day of December, 1994, at about 12:00 noon, at Brgy. Mahabang Parang, Municipality of San Luis, Province of Batangas, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with a bolo (gulukan) and a knife (balisong), conspiring and confederating together acting in common accord and mutually helping each other, with intent to gain and by means of violence and intimidation against person, did then and there wilfully, unlawfully and feloniously take, rob and carry away from one Natividad Yuzon Mendoza pieces of jewelry and cash money in the total amount of Thirty Thousand Pesos (P30,000.00), Philippine Currency, to the damage and prejudice of the said owner in the aforementioned amount; and that on the occasion of and by reason of the said robbery, the said accused did then and there wilfully, unlawfully and feloniously attack, assault and strangle to death said Natividad Yuzon Mendoza.

Contrary to law.[2]

The accused Nestor Catapang and the appellant, assisted by counsel, were arraigned for the crime charged and pleaded not guilty. Thereafter, trial on the merits ensued. During the trial, accused Catapang was shot dead while attempting to escape from the Batangas Provincial Jail. Trial continued as against the appellant Lito Hernandez.

The Case for the Prosecution

At about 7:00 a.m. on December 19, 1994, Cesar Yuzon, a forty-four-year-old sweepstakes ticket vendor, went to the Rural Health Center of Banoyo, San Luis, Batangas, to seek medical treatment for his ailment. After receiving his daily medication from the nurse, he left the health center and went to a nearby store to wait for a ride back to his house in Barangay Mahabang Parang, San Luis, Batangas. When no public utility jeepney passed by, he started walking towards the direction of Barangay Mahabang Parang. It was about 11:00 a.m.[3] Upon reaching the boundary of Banoyo and Mahabang Parang at around 12:00 noon, he saw his cousin-in-law, the appellant,[4] and Catapang dragging his seventy-two-year-old auntie, Natividad Yuzon Mendoza,[5] in the direction of a forested area where there were also mango and coconut trees.[6]

Cesar shouted, “Hoy, bakit ninyo kinakaladkad ang aking tiya?” Catapang and the appellant approached and told him not to interfere. Then Catapang pointed a knife at Cesar and, with the appellant, warned him not to reveal what he saw to anyone; otherwise, they would kill him and his family, including his children.[7]

The appellant and Catapang then returned to the place where Natividad was. Cesar followed them and concealed himself behind a mango tree about ten arm's length away, and saw them forcibly taking money, a pair of earrings and a necklace from the bag of his aunt, who was lying prostrate on the ground. Catapang and the appellant positioned themselves at Natividad's right and left side, and strangled her with the use of a white rope made of buri or vine string.[8] She pleaded, "Huwag po, huwag po," to no avail.[9]

Cesar hurriedly left the place on foot and went home. He kept the gory incident to himself for fear of retaliation from the accused and the appellant.

That afternoon, Natividad's son, Nemensio Mendoza, had already started looking for his mother. Cesar joined the search at 5:00 p.m. together with the barangay captain and some of the barangay folks. The cadaver of Natividad was found at about 11:00 p.m.[10]

SPO3 Ronald C. Macatangay and other police officers of the San Luis Police Station arrived at the scene of the crime and found the cadaver of Natividad wrapped in a piece of cloth. After taking pictures of the cadaver at different angles, it was brought to the De Guia Funeral Parlor.[11]

Dr. Antonio S. Vertido, the NBI Medico-Legal Officer, performed an autopsy on the cadaver of the victim and found injuries on the face, neck, and index finger. He also found a hematoma on the victim's chin, possibly caused by a bladed instrument,[12] and a ligature mark on her neck. He concluded that the victim died because of asphyxia by ligature strangulation.[13]

Cesar's fear was heightened when Catapang and the appellant warned him anew on Christmas Eve that if he divulged to anyone what he had witnessed on December 19, 1994, they would kill him and his children.[14] However, on February 7, 1995, Cesar finally decided to tell his cousin, Nemensio, how Natividad died and who the perpetrators were. He narrated how he saw Catapang and the appellant rob Natividad of her money and jewelry, and then strangled her to death. He and Nemensio forthwith went to the police station where they gave their respective sworn statements to SPO3 Macatangay.[15] Cesar and Nemensio also informed the barangay captain that Catapang and the appellant were the culprits in the killing of Natividad.

The Defense of the Appellant

The appellant denied killing Natividad and divesting her of her money and jewelry. He testified that he eked out a living as a sweepstakes ticket vendor, while his wife, Natividad's niece, earned a living as a sewer of baby dresses. He also revealed that his wife's father was the brother of Natividad.

December 19, 1994, a Sunday, was his birthday. At 12:00 noon, he had lunch at the Fresh Food restaurant in Parañaque. The following day, December 20, 1994, Juanito Yuzon informed him of Natividad's death. He then attended Natividad's wake, for two nights and two days. He only learned that Cesar had implicated him in the crime charged when he was arrested by policemen on April 18, 1995.[16]

On February 8, 1999, the trial court rendered its decision, the dispositive portion of which reads:

WHEREFORE, judgment is hereby rendered:

- Finding the accused LITO HERNANDEZ GUILTY beyond reasonable doubt of the complex crime of Robbery With Homicide and he is hereby sentenced to suffer the penalty of RECLUSION PERPETUA to DEATH, considering the presence of aggravating circumstances of abuse of superior strength, disregard of age, sex of the victim and the absence of any mitigating circumstance.
- Ordering Lito Hernandez to indemnify the heirs of the deceased:

P50,000.00 – Death of Natividad Yuzon

61,000.00 – Actual damages, jewelries (sic) and money
75,000.00 – Attorney’s fees
50,000.00 – Moral damages

- Cost of suit.

SO ORDERED.[17]

On automatic appeal before this Court, the appellant contends as follows:

I

THE LOWER COURT GRAVELY ERRED IN HOLDING ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF THE SPECIAL COMPLEX CRIME OF RAPE (SIC) WITH HOMICIDE DESPITE THE UNCORROBORATED, INCONSISTENT AND CONTRADICTORY TESTIMONY OF THE ALLEGED EYEWITNESS CESAR YUZON.

II

ASSUMING SANS ADMITTING THAT ACCUSED-APPELLANT PERPETRATED THE SUBJECT OFFENSE, THE LOWER COURT GRAVELY ERRED IN APPRECIATING AGAINST HIM THE GENERIC AGGRAVATING CIRCUMSTANCES OF ABUSE OF SUPERIOR STRENGTH, DISREGARD OF AGE AND SEX OF THE VICTIM.

III

THE LOWER COURT GRAVELY ERRED IN FAILING TO APPRECIATE IN ACCUSED-APPELLANT’S FAVOR THE MITIGATING CIRCUMSTANCE OF VOLUNTARY SURRENDER.[18]

The appellant avers that the trial court’s reliance on the testimony of Cesar Yuzon in convicting him of the crime charged is erroneous, because the latter failed to immediately report the incident to the barangay and police authorities and to his cousin, Nemensio, without any valid justification therefore. Cesar even joined Nemensio and the barangay officers in searching for Natividad in the afternoon of December 19, 1994; yet, he failed to reveal to them that he saw Catapang and the appellant strangle the victim and rob her of her jewelry and money. According to the appellant, Cesar’s conduct after witnessing the crime is contrary to human experience; hence, his testimony is barren of probative weight. The appellant furthers that Cesar could not have seen the killing from a distance of thirteen or fourteen meters, as his view was blocked by tall grasses, as well as the leaves of a mango tree. Furthermore, the appellant points out that the testimony of Cesar is inconsistent on material points. Thus, the appellant concludes, the prosecution failed to prove that he and Catapang brought the victim’s money and jewelry with them when they left the crime scene.

We agree with the appellant that the natural reaction of one who witnessed the commission of a crime, especially if the victim is his kin, is to immediately and spontaneously report the case to the police authorities so that the perpetrators are charged, prosecuted and punished if found guilty.[19] The principle, however, is not iron-clad.

Fear of reprisal and the natural reluctance of a witness to get involved in a criminal case are sufficient explanations for a witness’ delay in reporting the crime to the authorities.[20] Such failure in making a prompt report to the proper authorities does not destroy the truth per se of the complaint.[21] Likewise, the natural hesitance of the witnesses in this country to volunteer information about a criminal case, and their unwillingness to be involved or dragged into a criminal investigation is common, and has been judicially declared not to affect their credibility.[22]

In this case, Cesar testified that when he shouted at the appellant and Catapang to stop dragging his aunt

Natividad, the two confronted him and ordered him not to interfere. Then, Catapang pulled out his balisong and pointed it at Cesar. He was then warned not to reveal what he had just seen; otherwise, he and his family would be killed. Afraid for his life and those of his family, he kept the horrid crime to himself:

Q- Did you not inform them of what you saw?

A- I did not mention to anybody what I have seen or witnessed.

Q- Why?

A- For fear that if they will know about it, my family would be killed.

Q- What do you mean when you say that?

A- Because I was threatened that if I will tell that to anybody, I and my family would be killed.

Prosecutor:

Q- Who actually threatened you to kill you and your family?

A- The two (2) of them.

Court:

Q- Are you afraid of those words uttered to you?

A- Why should I not be afraid of the two (2) when my family, including me, threatened us (sic) to be killed.

Q- For how long have you known these two (2)?

A- I have known these two (2) for a long time.

Q- What is your relation to the two?

A- Lito Hernandez is married to a first cousin of mine.

Q- So what?

A- "Tinakot akong papatayin ang aking pamilya."

Q- Until now you are afraid?

A-

No more, Sir, because they are handcuffed, even [if] they are handcuffed, I can fight them now.[23]

...

Q- So, you will confirm that you allegedly witnessed the incident took place on December 19, 1994?

A- Yes, Sir.

Q-

After having allegedly witnessed that incident, you reported the matter to the police because you are a nephew of Natividad Yuzon?

A- Ay, hindi po.

Q- Why?

A- Because, Sir, they threatened to kill my family.

Q- Who threatened to kill your family?

A- These two, Sir.

Q- When did they threaten your family?

A- That very exact time, Sir.

Q- On December 19, they already threatened you?

A- Yes, Sir.

Q- You were there on December 19 at the scene of the incident?

A- Yes, Sir.

Q- They merely threatened you?

A- Yes, Sir.

Q- How did they threaten you?

A- They poked at me a bladed weapon, saying, they would kill me, including my children.

Q-

They did not kill you inspite of poking you that bladed weapon?

A- No, Sir.

Q- Did you make any reply to the threat made upon (sic) you by the two accused?

A-

I did not make any reply, I just raised my two hands, saying, wala, wala.[24]

As to why it took him until February 17, 1995 to report the incident to the police officers, Cesar explained, thus:

Q

Mr. Witness, this incident happened on December 19, 1994 and you made your statement on February 7, 1995 why (sic) it took you two months to give your statement in relation to this incident?

A

I was afraid for my life, my school children were being threatened by them of the death if I report the matter to the authorities.

Q Who actually threatened your school children?

Atty. Lacap:

Witness will be incompetent.

Prosecutor Cuevas:

Q How did you come to know that your children were being threatened?

A

The two themselves told me that if I make any report of the incident they would kill my children.[25]

Cesar, a forty-five-year-old farmer, cannot be blamed for not immediately revealing to his relatives, and the barangay and police authorities that he witnessed the killing of Natividad, especially since the appellant and Catapang repeated their threats barely a week later, or on Christmas Eve:

Q This incident that you have witnessed and you are testifying now happened on December 19, 1994 and you made your statement to the San Luis Police Station on February 7, 1995, why did it take you so long for almost two (2) months to report the incident?

A I was threatened of death.

Q Will you tell this Honorable Court when were you threatened of death?

Atty. Reyes:

That is very improper for re-direct.

Atty. Tenorio:

Why?

Atty. Reyes:

That was already mentioned in the direct examination. To alter that would be improper already, answered by the witness.

Atty. Tenorio:

The purpose of re-direct examination is to clarify things.

Atty. Reyes:

Answered by the witness.

Court:

The facts are mentioned.

Atty. Reyes:

We leave it to the court.

Prosecutor Cuevas:

If Your Honor, please, the question of the private prosecutor is within the ambit of ...

Atty. Reyes:

We have stated that in the direct examination, Your Honor.

Atty. Tenorio:

It was touched during the cross.

Prosecutor Cuevas:

It was mentioned in the direct.

Court:

Objection overruled.

Atty. Reyes:

The record is very clear, my last question is will you not change your answer anymore, meaning to say that he testified, he said no, Sir, and now he will change.

Court:

Witness may answer.

Atty. Reyes:

May we manifest vehemently of this representation that the question was already propounded to this witness.

Court:

Witness may answer.

Witness:

A On December 19, 1994.

Atty. Tenorio:

Q Only on December 19, 1994?

A

Then the second, it was on the 24th of the month of the same year, 1994.[26]

The appellant's contention that Cesar could not have seen him and Catapang strangle Natividad because the tall grasses and the leaves of a mango tree blocked his view is belied by Cesar's testimony:

Prosecutor:

Q- How did the two (2) strangle your auntie?

A- "Tinalian ang leeg."

Q- After the two (2) accused tied the neck, what happened next?

A- "Binigti nila."

Q- While this incident was taking place, the act of taking the money and pieces of jewelry after which your auntie was tied and was strangled, what were you doing at that time?

A- I peeped at them.

Q- At that place where you were peeping to the place where the taking of money and jewelry and strangulation of your auntie, how far were you from the place where you were peeping?

Atty. Lacap:

The question is vague.

Prosecutor:

From the place where you were peeping?

Court:

Q- What do you mean by “sumilip?”

A- “Noong sinisilip ko sila, pinanonood ko sila.”

Prosecutor:

Q-

From the place where you peeped to the place where your aunt was being strangled by these two, how far were you from that place?

A- More or less ten (10) arm[’s] lengths (sic) also.

Court:

Q- Mr. Witness, when you say that you were peeping to the three (3), what do you mean?

A- Because I was hiding from something which is (sic) leaves of mango tree.

Q-

Do you want to convey to the Court that from the place where you were peeping and the place where the three (3) were, is there something that obstruct (sic) your view?

A-

Not so much of an obstruction but then you have to separate the leaves in order to peep, “hinahawi.”[27]

It bears stressing that the crime was committed in broad daylight, about 12:00 noon. We have ruled that where the conditions of visibility are favorable and the witness does not appear to harbor any ill motive against the malefactors, his testimony as to how the crime was committed and on the identities of perpetrators must be accepted.[28] There is no evidence on record of any ill motive on the part of Cesar to falsely implicate Catapang and the appellant in the heinous crime for which the latter could be sentenced to the capital penalty.

The well-entrenched rule in this jurisdiction is that the matter of ascribing substance to the testimonies of witnesses is best discharged by the trial court, and the appellate courts will not generally disturb the findings of the trial court in this respect. The rationalism is quite simple: the trial judge is in a better position to ascertain the conflicting testimonies of witnesses after having heard them and observed their deportment and mode of testifying.[29]

Cesar’s positive identification of the appellant as the perpetrator of the crime, absent any showing of ill motive, must prevail over the appellant’s lame and obviously fabricated defenses of denial and alibi. Denials, as negative and self-serving evidence, do not deserve as much weight in law as positive and affirmative testimonies. Prevalently repeated is the rule that for alibi to countervail the evidence of the prosecution confirming the appellant’s guilt, he must prove that he was not at the locus delicti when the crime was committed and that it was also physically impossible for him to have been at the scene of the crime at the time it was perpetrated.[30] In the case at bar, the defense utterly failed to satisfy these requirements.

Remarkable is the fact that the defense had no corroborating witness to strengthen the testimony of the appellant that he was at the Fresh Food restaurant in Parañaque at the time of the commission of the crime. Strangely, the appellant even testified that he was certain that December 19, 1994 was a Sunday, because it also happened to be his birthday. The trial court, however, took judicial notice of the fact that December 19, 1994 was a Monday, thereby further debilitating the appellant’s defense.

The appellant’s claim that he cannot be convicted of robbery because the prosecution failed to prove that, after

divesting Natividad of her money and jewelry, he and Catapang carried the same with them when they left the situs criminis is barren of merit.

In robbery, there must be an unlawful taking or apoderamiento which is defined as the taking of items without the consent of the owner, or by means of violence against or intimidation of persons, or by using force upon things. Taking is considered complete from the moment the offender gains possession of the thing, even if he has no opportunity to dispose of the same.[31] There is, likewise, no need to prove the exact amount of money taken, as long as there is proof of the unlawful taking.[32] Intent to gain, or animus lucrandi, as an element of the crime of robbery, is an internal act; hence, presumed from the unlawful taking of things.[33]

Cesar testified that the appellant and Catapang took the money and jewelry of Natividad and then strangled her to death:

Prosecutor Cuevas:

Q

After you were approached by the two, Lito Hernandez and Nestor Catapang, what happened if anything happened?

A Tinutukan nila ako, saying for (sic) me not to report the matter.

Q When you said tinutukan nila, what do you mean?

A The balisong or boloet (sic) was poked at me telling me not to make any report.

Q Who actually poked the balisong?

A Nestor Catapang, Sir.

Q After that, what happened next if anything happened?

A Thereafter, they returned to the place where my aunt was.

Q After that, when they returned to the place where your aunt was, what happened if anything happened?

A After they had strangled her, they took the money.

Q Which took first, the strangulation or the taking of the money and others?

A The taking of the money took first.

Q While the two were taking the money and after they strangled ...

Atty. Lacap:

Objection, Your Honor, what did you do if you did anything.

Court:

Reform.

Prosecutor Cuevas:

Q You said, how far were you from the two when Lito Hernandez and Nestor Catapang strangled your aunt?

Atty. Lacap:

Objection, Your Honor, there was no statement from the witness ...

Prosecutor Cuevas:

Q

According to the witness a while ago after the two returned to the place where his aunt was and my question ...

Court:

Witness may answer.

Witness:

A Less than ten armlengths (sic).

Q Aside from that money, do you know of what (sic) other items were taken from the body of your aunt, if any?

Atty. Lacap:

No basis, Your Honor.

Court:

Witness may answer.

A Jewelries (sic).

Prosecutor Cuevas:

Q What kind of jewelries (sic)?

A Necklace and earrings.

Q After your aunt was strangled, what did you do?

A After the strangulation (sic) of my aunt, I left the place.

Q A while ago, how did these two strangled (sic) your aunt?

A They used a white object in the strangulation of my aunt.

Q That white material, it is made of what?

A Somewhat buri or vine but whitish.

Q

The position of your aunt, can you please demonstrate to us how these two strangled (sic) your aunt using that white material either buri or vine.

(At this juncture, witness playing the role of the accused and the court interpreter playing the role of the victim place[d] his right hand, made two rounds around the neck of the Court Interpreter.)[34]

We agree with the trial court that the appellant is guilty of robbery with homicide under Article 294, paragraph 1 of the Revised Penal Code, as amended by Republic Act No. 7659.

In robbery with homicide, the original criminal design of the malefactor is to commit robbery, with homicide perpetrated on the occasion or by reason of the robbery.[35] The intent to commit robbery must precede the taking of human life.[36] The homicide may take place before, during or after the robbery. It is only the result obtained, without reference or distinction as to the circumstances, causes, modes or persons intervening in the commission

of the crime that has to be taken into consideration.[37] There is no such felony of robbery with homicide through reckless imprudence or simple negligence. The constitutive elements of the crime, namely, robbery and homicide, must be consummated.

When homicide is committed by reason or on the occasion of robbery, all those who took part as principals in the robbery would also be held liable as principals of the single and indivisible felony of robbery with homicide although they did not actually take part in the killing, unless it clearly appears that they endeavored to prevent the same.[38]

All those who conspire to commit robbery with homicide are guilty as principals of such crime, although not all profited and gained from the robbery. One who joins a criminal conspiracy adopts the criminal designs of his co-conspirators and can no longer repudiate the conspiracy once it has materialized.[39]

Homicide is said to have been committed by reason or on the occasion of robbery if, for instance, it was committed to (a) facilitate the robbery or the escape of the culprit; (b) to preserve the possession by the culprit of the loot; (c) to prevent discovery of the commission of the robbery; or, (d) to eliminate witnesses in the commission of the crime. As long as there is a nexus between the robbery and the homicide, the latter crime may be committed in a place other than the situs of the robbery.[40]

In this case, the appellant conspired with Catapang in committing the crime charged in the light of the evidence on record. The original design of the appellant and his cohort was to rob the victim. They did rob the victim, and then strangled her to death.

We disagree with the trial court's finding that abuse of superior strength, disregard of sex and age, were attendant in the commission of the crime. Section 8, Rule 110 of the 2000 Revised Rules on Criminal Procedure now explicitly requires the complaint or information to "state the designation of the offense given by the statute, aver the acts or omissions constituting the offense, and specify the qualifying and aggravating circumstances." Under the old rule, only the qualifying circumstances were needed to be alleged in order to be considered by the court. The present rules, however, require even the aggravating circumstances to be alleged in the complaint or information. The information in the present case failed to precisely aver that abuse of superior strength and disregard of age and sex attended the commission of the crime.[41] Although the rule took effect only on December 1, 2000 and it was the old law that was in effect at the time of the commission of the crime, the same may be applied retroactively insofar as it benefits the accused.[42]

Moreover, the aggravating circumstances of abuse of superior strength and disregard of age and sex cannot be appreciated as no evidence was presented to prove the same. To establish the aggravating circumstance of abuse of superior strength, there must be a deliberate intent on the part of the malefactors to take advantage of their greater number. They must have nefariously selected and made use of superior strength in the commission of the crime.[43] As an aggravating circumstance, what should be considered is not that there are two or more assailants as against one victim, but whether the aggressors took advantage of their combined strength in order to consummate the offense.[44]

With respect to disregard of age and sex, the Court has pronounced in the case of *People v. Collado*[45] that the same may be appreciated only in crimes against persons or honor. It is not correct to consider this aggravating circumstance in crimes against property. Besides, robbery with homicide is principally a crime against property and not against persons. Homicide is a mere incident of the robbery, the latter being the main purpose and object of the criminal. Moreover, it has not been proven that in committing the crime, the appellant determinedly intended to offend or insult the age and sex of the victim.[46]

The mitigating circumstance of voluntary surrender is not present in the case at bar. To benefit an accused, the following requisites of this circumstance must be proven, namely: (1) the offender has not actually been arrested; (2) the offender surrendered himself to a person in authority; and (3) the surrender was voluntary.[47] A surrender is said to be voluntary when it is done by the accused spontaneously and made in such manner that it shows the intent of the accused to surrender unconditionally to authorities, either because he acknowledges his guilt or he wishes to save them the trouble and expense necessarily incurred in his search and capture.[48] In this case, there is no indication in the record that the appellant, of his own accord, came forward and presented himself before the authorities, manifesting his desire to spare the Government the time, effort and expense of pursuing him.[49] The appellant surrendered only after the warrant of arrest was served upon him. The fact that the appellant did not defy but went peacefully with the arresting officer does not mean that he voluntarily surrendered. Hence, this mitigating circumstance can not be appreciated in favor of the appellant.

There being neither aggravating nor modifying circumstances that attended the commission of robbery with homicide, the appellant should be meted the penalty of reclusion perpetua, conformably to Article 63 of the Revised Penal Code.[50]

The award of P50,000 as civil indemnity for the death of Natividad Yuzon Mendoza should be upheld without need of proof for being in accordance with prevailing jurisprudence. Similarly, the appellant is liable to pay P50,000 as moral damages to the heirs of the victim for the pain and sorrow they suffered.[51] The prosecution in this case adduced evidence to prove the factual basis for an award therefor.

However, we find that the grant of P61,000 as actual damages is not properly supported by the evidence on record. The trial court relied exclusively on the testimony of Nemensio Mendoza, the victim's son, with respect to the amount of burial expenses. Further, there was insufficient basis for the award as only the receipt of Funeraria De Guia (Contract Invoice No. 333) amounting to P11,000 as proof of funeral expenses, was presented in evidence. Thus, this award should be reduced accordingly. Nevertheless, the heirs are entitled to temperate damages in the amount of P25,000.[52]

Likewise, nothing on the record manifests the actual expenses incurred by the heirs of Natividad for attorney's fees. Attorney's fees are in the concept of actual or compensatory damages allowed under the circumstances provided for in Article 2208 of the Civil Code, one of which is when the court deems it just and equitable that attorney's fees should be recovered.[53] In this case, we find the award of P75,000 as attorney's fees unsupported by evidence and, therefore, should be deleted for lack of basis.

WHEREFORE, the assailed Decision dated February 8, 1999 of the Regional Trial Court of Lemery, Batangas, Branch 5, in Criminal Case No. 13-95 is hereby **AFFIRMED WITH MODIFICATIONS**. Appellant Lito Hernandez is found **GUILTY** beyond reasonable doubt of robbery with homicide under Article 294, paragraph 1 of the Revised Penal Code, as amended, and is sentenced to an indivisible penalty of reclusion perpetua. The said appellant is **ORDERED** to pay the heirs of Natividad Yuzon Mendoza the following amounts: (a) Fifty Thousand Pesos (P50,000) as civil indemnity; (b) Fifty Thousand Pesos (P50,000) as moral damages; and, (c) Twenty-Five Thousand Pesos (P25,000) as temperate damages.

Costs de oficio.

SO ORDERED.

Davide, Jr., C.J., Puno, Panganiban, Quisumbing, Sandoval-Gutierrez, Carpio, Austria-Martinez, Carpio-Morales, Azcuna, and Tinga, JJ., concur.

Vitug, and Corona, JJ., on official leave.

Ynares-Santiago, J., on leave.

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- [1] Penned by Executive Judge Amando V. Hernandez.
- [2] Rollo, pp. 6-7.
- [3] TSN, 28 August 1996, pp. 6-10.
- [4] Remedios Yuzon, the wife of the accused Lito Hernandez, is the first cousin of Cesar Yuzon.
- [5] The father of Cesar Yuzon is the brother of Natividad Yuzon Mendoza.
- [6] TSN, 25 October 1995, pp. 2-4; TSN, 6 February 1997, pp. 3-4; TSN, 13 February 1997, p. 2.
- [7] TSN, 20 September 1995, pp. 4-5; TSN, 25 October 1995, pp. 3-4.
- [8] Id. at 5-7; Id. at 5-10.
- [9] TSN, 18 March 18, 1997, p. 7.
- [10] TSN, 29 January 1997, pp. 10-12, 21-22.
- [11] TSN, 16 July 1997, pp. 4-6, 11.
- [12] TSN, 7 March 1996, p. 6.
- [13] Exhibit "E."
- [14] TSN, 20 September 1995, pp. 7-8; TSN, 25 October 1995, pp. 11-13.
- [15] TSN, 28 November 1995, pp. 2-3.
- [16] TSN, 19 August 1998, pp. 3, 5-7, 9-10.
- [17] Rollo, pp. 33-34.
- [18] Id. at 83-84.
- [19] *People v. Baquiran*, 20 SCRA 451 (1967).
- [20] *People v. Galido*, 326 SCRA 187 (2000).
- [21] *People v. Sagun*, 303 SCRA 382 (1999).
- [22] *People v. Estocada*, 75 SCRA 295 (1977).
- [23] TSN, 25 October 1995, pp. 12-13.
- [24] TSN, 26 March 1996, pp. 2-3.
- [25] TSN, 20 September 1995, p. 8.
- [26] TSN, 2 April 1997, pp. 2-3.
- [27] TSN, 25 October 1995, pp. 9-10.
- [28] *People of the Philippines v. Jose dela Cruz*, G.R. No. 148730, June 26, 2003.
- [29] *Ibid.*

- [30] People of the Philippines v. Dindo Vallejo, et al., G.R. No. 125784, November 19, 2003.
- [31] People v. Ellasos, 358 SCRA 516 (2001).
- [32] People v. Arellano, 366 SCRA 204 (2001).
- [33] People v. Ellasos, supra.
- [34] TSN, 20 September 1995, pp. 5-7.
- [35] People v. Salazar, 277 SCRA 67 (1997); People v. Abuyen, 213 SCRA 569 (1992).
- [36] People v. Ponciano, 204 SCRA 627 (1991).
- [37] People v. Mangulabnan, 99 Phil. 992 (1956).
- [38] People v. Carrozo, 342 SCRA 600 (2000); People v. Verzosa, 294 SCRA 466 (1998).
- [39] People v. Palijon, 343 SCRA 486 (2000).
- [40] People v. De Jesus, 403 SCRA (2003).
- [41] People of the Philippines v. Erwin T. Otayde, et al., G.R. No. 140227, November 28, 2003.
- [42] People v. Buayaban, 400 SCRA 48 (2003).
- [43] People v. Lobrigas, 394 SCRA 170 (2002).
- [44] People v. Platilla, 304 SCRA 339 (1999).

[45] 196 SCRA 519 (1991).

- [46] People v. Bayot, 174 SCRA 285 (1989).
- [47] People of the Philippines v. Sergio A. Caratao, G.R. No. 126281, June 10, 2003.
- [48] People of the Philippines v. Ferdinand Fallorina, G.R. No. 137347, March 4, 2004.
- [49] People v. Ramos, 296 SCRA 559 (1998).
- [50] ART. 63. Rules for the application of indivisible penalties. – In all cases in which the law prescribes a single indivisible penalty, it shall be applied by the courts regardless of any mitigating or aggravating circumstances that may have attended the commission of the deed.

In all cases in which the law prescribes a penalty composed of two indivisible penalties, the following rules shall be observed in the application thereof:

...

- When there are neither mitigating nor aggravating circumstances in the commission of the deed, the lesser penalty shall be applied.

- [51] People of the Philippines v. George Bolinget, et al., G.R. Nos. 137949-52, December 11, 2003.
- [52] People v. Delos Santos, 403 SCRA (2003)
- [53] People of the Philippines v. Eric Guillermo, G.R. No. 147786, January 20, 2004.

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