

**PEOPLE OF THE PHILIPPINES, APPELLEE, VS. ERWIN T. OTAYDE
ALIAS BOY OTAYDE, JIMMY B. QUINTANA ALIAS OTTO, CABAGUE
MAMA AND KUMAYOG M. PANANSARAN ALIAS RAMBO,
APPELLANTS.**

G.R. No. 140227. November 28, 2003

Ponente: CORONA, J.

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CORONA, J.:

For automatic review is the decision[1] of the Regional Trial Court of the Twelfth Judicial Region, Branch 19, Isulan, Sultan Kudarat, finding appellants guilty beyond reasonable doubt of robbery with homicide and assault upon a person in authority, and imposing upon them the extreme penalty of death.

The information charging appellants with the aforesaid offenses alleged:

That on or about 8:00 o'clock in the evening of March 29, 1997, at Barangay Keytodak, Municipality of Lebak, Province of Sultan Kudarat, Philippines, and within the jurisdiction of this Honorable Court, the said accused, in company with HADJI ESMAEL BUDI alias KAGUI, PATERNO DEPOSITARIO alias BOY KAMOTE, DATU SONNY KARON AMBAS alias COMMANDER SONNY, PASCUAL "KUA" KARON, MANUEL HINOCTAN alias DOOS or IDOD, ALLAN INAANOD alias DOD-DOG, alias SARGE, alias OTING and alias ALI, who are at-large and whose cases are still pending preliminary investigation before the 1st Municipal Circuit Trial Court of Lebak-Kalamansig, Sultan Kudarat, armed with assorted high-powered firearms, conspiring, confederating together and mutually helping one another, with intent to gain, with malice aforethought and by means of force, intimidation and violence, did then and there, wilfully, unlawfully and feloniously, take and carry away a piggy bank containing THREE THOUSAND PESOS (P3,000.00); one (1) ICOM Radio; One wallet containing an amount of P2,000.00; one (1) Garand Rifle; and One (1) Caliber .38 Revolver belonging to EDUARDO CEJAR with an aggregate value of P33,000.00; also taken away was a handgun and cash money amounting to P12,500.00 belonging to Dodong Cabe, to the damage and prejudice of the said owners; that on the occasion of said robbery, the accused in pursuance of their conspiracy, with intent to kill and having known Eduardo Cejar as the Barangay Captain of Keytodak, therefore a person in authority, and while the latter was engaged in the performance of his official duties as such Barangay Capitan or on the occasion of such performance, did then and there, wilfully, unlawfully and feloniously, attack, assault and shoot said Eduardo Cejar with the uses of the afore-mentioned weapons, thereby inflicting gunshot wounds upon the latter which directly caused his death.

CONTRARY TO LAW, particularly Articles 294 (1) and 249, in relation to Article 148 and 48 of the Revised Penal Code of the Philippines.[2]

On arraignment, appellants pleaded not guilty to the charge. Thereafter, trial on the merits ensued. The prosecution presented 6 six witnesses, namely: Evelyn vda. de Cejar, Rogelio Tabaosares, Judge Osmundo Villanueva, Elizer Moniva, SPO4 Vicente Oro and Dr. Johnny Tan. Their testimonies may be summarized as follows:

At around 7:30 p.m. of on March 29, 1997, Evelyn Cejar was at home with her five children at Barangay Keytodak, Lebak, Sultan Kudarat. Her husband, Eduardo Cejar, who was the barangay captain of Keytodak, was then at the nearby plaza. Evelyn and her children were about to sleep when her relative, Jingjing Camban, arrived and told her that about ten armed men were sighted approaching Barangay Keytodak. Evelyn immediately relayed the information to her husband Eduardo through the radio ICOM radio; who, in turn, promptly dispatched four members of the Civilian Volunteers Organization (CVO), namely, Rogelio Tabaosares, Teodolfo Erania, Generoso Cuba, and Elizer Moniva, to get the firearms stored in his house. When the volunteers arrived at the Cejar residence, Evelyn gave each one of them the firearms and ammunitions. But as the volunteers were about to leave the Cejar residence, the armed men arrived, and ordered them to put down their weapons and drop to the ground. Tabaosares and Moniva obeyed, while Terania and Cuba ran away.

Evelyn closed the door of the house and instructed her children to hide in the kitchen. Thereupon, the armed men shouted and asked for the barangay captain. Evelyn replied that her husband was in the public market. The men told her to open the door and threatened to burn down her house if she refused. As soon as Evelyn opened the door, one of the armed men pointed his gun at her and asked for money. Evelyn handed over her coin bank containing about P3,000. The armed men also took her wallet with P200 in it, and the radio ICOM radio of her husband. Then they searched the house for guns but failed to find any.

A few minutes later, a motorcycle stopped near the house and caught the attention of the armed group. Evelyn and her children took advantage of the opportunity and escaped. Meanwhile, Moniva, who was lying face down on the ground with Tabaosares, raised his head and saw the faces of four of the armed men who were illuminated by the motorcycle's headlights. The armed men pointed their guns at the motorcycle driver, a certain Dodong Cabe, and ordered him to drop flat on the ground. At this moment, Barangay Captain Eduardo Cejar arrived at the scene. As he approached the armed group, the men cocked and pointed their firearms and pointed them at him. Cejar was prompted to identify himself by saying, "No, this is the barangay captain." Notwithstanding, he was immediately shot by one of the armed men. This was followed by a series of gunshots. Thereafter, the armed men boarded the motorcycle and fled. As soon as the armed men were gone, Moniva stood up to look for the barangay captain and found him dead. Evelyn and her children likewise returned to their house and were shocked to see Eduardo Cejar lying dead in a pool of his own blood. Evelyn then found out that the wristwatch of her husband, worth P1,000, his .38 caliber pistol-revolver, and P12,500 in cash, were missing.

Dr. Johnny Tan, the Municipal Health Officer of Lebak, Sultan Kudarat, conducted a post mortem examination on Eduardo Cejar and found that the victim sustained four gunshot wounds on his body which resulted in "massive hemorrhage causing hypochloremic shock." [3]

The defense presented appellants themselves as testified in their defense witnesses.

Appellant Erwin Otayde testified that on March 25, 1997, he was with Moro National Liberation Front (MNLF) Commander Sonny Karon, and they went to Barangay Guintales in order to meet a certain Kague Esmail. While the three of them were having breakfast the following morning, two persons arrived, one of whom was a certain Boy Kamote. He overheard Commander Karon and Kague Esmail planning the attack on Barangay Keytodak, because firearms were said to be stored in the house of the barangay captain. He got so scared that he sought permission to leave the group, but Commander Karon denied his request. They then proceeded to Barangay Dano and arrived thereat in the morning of March 27, 1997. They stayed in the house of Boy Kamote for three days, or until March 29, 1997.

At around 7:00 p.m. of March 29, 1997, the group of Commander Karon, now with 13 armed members, left Barangay Dano and proceeded to Barangay Keytodak to carry out their plan to seize the firearms kept in the

house of Barangay Captain Cejar. When they reached the house of Cejar, they saw four civilian volunteers, two of whom were disarmed by appellant Kumayog Panansaran, alias Rambo, while the two others were able to escape. Then, they ordered the wife of Cejar to open the door. Moments later, a motorcycle arrived, carrying three persons who were all ordered by appellant Cabague and a certain Oting and Ali to drop to lie flat on the ground together with the two volunteers. Thereafter, Cejar arrived alone carrying a firearm. Commander Karon told Cejar to lay down his firearm but he refused. Thus, Commander Karon shot him. Oting, Rambo and Ali also fired simultaneously at the victim. The group then entered the house and took a coin bank and a radio ICOM radio. Then they left Keytodak. From March 30 until April 5, 1997, the group stayed in Barangay Kebitic and returned to Barangay Guintales in the evening of April 5, 1997.

Otayde further testified that during the time that they were in the Cejar residence, he was just hiding behind the fence of the house. He denied being a member of MNLF. His presence at the crime scene with the armed men was mainly because he feared for his life.

Upon his arrest on April 15, 1997, Otayde executed a written extrajudicial confession^[4] in the presence of his counsel, Atty. Alberto Yap, his father, Eleuterio Otayde, and SPO4 Vicente Oro. On the witness stand, he admitted having executed the said extrajudicial confession. In the said confession, Otayde identified in his extrajudicial confession his 12 other companions during the commission of the crime, namely: Commander Sonny Karon, Sarge, Ali, Waway, Kumayog Panansaran, Oting, Cabague Mama, John, Allan, Jimmy Quintana, Boy Kamote and Hadji Esmail. Except for appellants Kumayog Panansaran, Cabague Mama, Jimmy Quintana and himself, all the others have remained at large.

Appellant Kumayog Panansaran, alias Rambo, declared that he was a member of MNLF. At about 7:00 p.m. of on March 26, 1997, Commander Karon, together with seven companions, arrived in his house in Lebak, Sultan Kudarat. He was told to go with them. They went to Guintales and then to Dano where they passed by the house of Jimmy Quintana, who joined them in before proceeding to Keytodak on March 29, 1997. When he asked why they were going to Keytodak, and he was told that they would attend the settlement of a case between Boy Kamote and a certain Father Mariano. Suddenly, he heard a gun burst of gunfire and all of them instinctively dropped to the ground. The group decided not to proceed to Keytodak anymore. He later learned that a person was killed. He, however, admitted that all of them were armed at that time and were registered members of MNLF.

Appellant Cabague Mama narrated that at around 3:00 a.m. of on March 27, 1997, he was awakened by the arrival of Commander Karon, Boy Kamote, Otayde, Rambo, Waway, Sarge, Ali and Teng at his house. The group stayed at in his place until 7:00 p.m. of the same day. On March 28, 1997, he joined the group in proceeding to go to Dano where they stayed in Boy Kamote's house. There he met Jimmy Quintana. At 7:00 p.m. of on March 29, 1997, the group proceeded to Keytodak. Upon reaching the barangay, they heard about six gunshots so they decided to go back to Dano instead. He later learned from Commander Karon and Boy Kamote that Barangay Captain Eduardo Cejar was killed in Keytodak. Likewise, he admitted that he used to be a member of the MNLF but had left the group to spend more time with his family.

Finally, Appellant Jimmy Quintana alias Otto initially testified that he was at in Dano, Sultan Kudarat on March 28, 1997. However, on further direct examination by his counsel, Atty. Lorenzo Balo, appellant manifested a lack of cooperation and interest, prompting Atty. Balo to dispense with his testimony.

On July 30, 1999, the trial court rendered a decision convicting appellants of the offense charged as follows:

WHEREFORE, upon all the foregoing considerations, the Court finds the accuseds (sic), Erwin Otayde alias Boy Otayde, Jimmy B. Quintana alias Otto, Cabague Mama and Kumayog M. Panansaran alias Rambo, guilty

beyond reasonable doubt of the crime of ROBBERY WITH HOMICIDE AND ASSAULT UPON A PERSON IN AUTHORITY.

Accordingly, however, unpleasant, even painful is the compliance with its duty to apply the penalty provided by law, the Court hereby sentences the accuseds (sic), Erwin Otayde alias Boy Otayde, Jimmy B. Quintana alias Otto, Cabague Mama and Kumayog M. Panansaran alias Rambo:

(a)

to suffer the extreme penalty of DEATH;

(b)

to jointly and severally indemnify the heirs of the deceased victim, Barangay Captain Eduardo Cejar, the sum of FIFTY THOUSAND (P50,000.00) PESOS, as statutory indemnity for the death of the said deceased victim;

(c)

to jointly and severally indemnify the heirs of the deceased victim, Barangay Captain Eduardo Cejar, the total amount of FORTY EIGHT THOUSAND TWO HUNDRED (P48,200.00) PESOS, by way of actual damages representing expenses incurred as a result of the death, wake and burial of the said deceased victim;

(d)

to jointly and severally return to the heirs of the deceased victim, Barangay Captain Eduardo Cejar, the amount of THREE THOUSAND (P3,000.00) PESOS seized inside a piggy bank, as well as, the amount of TWO HUNDRED (P200.00) PESOS, seized inside a wallet, and a wristwatch or to pay its actual price of ONE THOUSAND (P1,000.00) PESOS, as parts of the reparation, to be returned to or to be paid by the accuseds (sic); and

(e)

to pay the costs.

IT IS SO ORDERED.[5]

Appellants Jimmy Quintana, Cabague Mama and Kumayog Panansaran assailed their conviction, raising the sole issue of whether conspiracy may should be considered against them.[6]

For his part, appellant Erwin Otayde raised the following assignments of errors:

- The Honorable Court a quo erred in finding out (sic) that accused Erwin Otayde was one of the conspirators who must equally bear the consequences of the crime done by all the other accused despite lack of sufficient, independent and strong evidence of conspiracy shown and proved by the prosecution.
- The Honorable Court a quo seriously erred in finding out (sic) that accused Erwin Otayde is a co-principal of the offense charged.[7]

We shall deem it fit to jointly discuss the errors separately assigned by the appellants since they are all interrelated.

Appellants argue that conspiracy must be proved in the same manner as any element of the criminal act itself. They claim that the prosecution failed to establish their actual participation in the crime as well as the identity of the killer of Eduardo Cejar, thus negating the existence of conspiracy.

It is true that conspiracy, like the crime itself, must be proved beyond reasonable doubt. A person's mere passive

presence at the crime scene does not make him a conspirator. However, in the instant case, appellants' presence at the scene of the crime was not merely at all passive. By their concerted acts, They they directly participated in the a common criminal design by their concerted acts. The vital portions of tThe testimonies of Evelyn Cejar and Elizer Moniva clearly indicated that some of the assailants were busy searching the house for for money and firearms inside the house, while the others stayed outwere outside with their guns pointed at Moniva and Tabasaors. They acted as lookouts too. Upon the arrival of When Barangay Captain Cejar arrived, the assailants pointed their firearms at him. And aAs soon as the first shot was fired, at Cejar, a barrage of gunshots coming from the other assailants immediately followed,. These were all directed against at the same victim. Thereafter, two of the armed group men entered the house to seize more valuables. Then, appellants and the other members of the armed group fled together from the scene of the crime.

Such conduct undoubtedly evinced showed appellants' cooperation with one another and adequately established their complicity to in the crime. All of them had the same purpose and were united in its execution. The fact that it was Commander Karon who actually shot Cejar would did not absolve the other appellants from liability. The concerted manner by which appellants and their companions perpetrated the crime showed proved beyond reasonable doubt the existence of a conspiracy. Where conspiracy had has been established, it matters not who among the perpetrators actually shot and killed the victim. All the conspirators are equally liable as co-principals regardless of the manner and extent of their participation. In point ofUnder the law, the act of one would beis the act of all.[8]

Whenever homicide has beenis committed as a consequence or on the occasion of a robbery, all those who took part in the robbery may beare to be held guilty of robbery with homicide, as principals, although they did may not actually have taken part in the homicide, unless it can beis clearly shown that they endeavored tried to prevent the commission of the homicide from being likewise committed.[9] Appellants in this case did nothing to prevent the other perpetratorsactual killers from shooting the victim but and even left the crime scene together, as a group.

Appellants were likewise positively identified by prosecution witnesses as among those armed men who attacked the Cejar residence on the night of March 29, 1997. It is settled that when conditions of visibility are favorable, and the witnesses do not appear to be biased, their assertion as to the identity of the malefactors should be accepted.[10] In the case at bar, Evelyn Cejar clearly was able to identified identify the assailants as there were then two lighted kerosene lamps at in the living room of her house at that time. Further, Moniva saw the faces of the armed men because they were illuminated by the motorcycle's headlights. Clearly, these circumstances erased whatever doubt there is was as to the appellants' identityidentities.

In robbery with homicide, the prosecution needs to prove only the following elements: (a) the taking of personal property is perpetrated attended by means of violence or intimidation against a person; (b) the property taken belongs to another; (c) the taking is characterized with intent to gain or animus lucrandi; and (d) on the occasion of the robbery or by reason thereof, the crime of homicide, here used in its generic sense, is committed.[11]

In the presentthis case, all the essential elements of robbery with homicide have beenwere established beyond reasonable doubt. by the prosecution. Personal properties items belonging to Eduardo and Evelyn Cejar had beenwere taken at gunpoint by appellants and their companions. The armed group likewise forcibly took by forcethe money and firearms they found inside the Cejar residence. Finally, during said the heist, the barangay captain was ruthlessly shot to death.

It is also worth mentioningWe note that appellants Cabague Mama and Kumayog Panansaran escaped while detained at during detention from the provincial jail of Isulan, Sultan Kudarat, before the judgment against them was promulgated. They have not been recaptured up to this time.[12] No other reason can be deduced from

appellants' flight other than that they were driven by a strong sense of guilt and an awareness that they had no tenable defense.

Pursuant to the information, the trial court found appellants guilty beyond reasonable doubt of the complex crime of "robbery with homicide and assault upon a person in authority." This, however, is erroneous. There is no complex crime of "robbery with homicide and assault upon a person in authority." The law is clear that, if the victim is killed on the occasion or by reason of a robbery, the offense becomes a special complex crime of robbery with homicide defined and penalized under Article 294 (1) of The the Revised Penal Code. Even if the victim, as in this case, was a barangay captain, and therefore a person in authority under Article 152 of The the Revised Penal Code, the crime committed by appellants should would simply still be robbery with homicide. As long as robbery was is the main purpose and objective of the criminals, and the killing merely resulted results by reason or on the occasion of the robbery, the indictable offense would beis robbery with homicide. As mentioned earlier, tThe evidence presented in this caseof the prosecution was indubitably revealed that the principal purpose of the appellants and their group was to steal the firearms kept inside the house of the barangay captain, and to divest the residents thereof of their money and other belongings. Even aAppellant Otayde himself admitted that, in going to Barangay Keytodak, their group was determined to get the firearms from the barangay captain's house.

We are also convinced that Erwin Otayde's extrajudicial confession is was admissible in evidence, as it satisfactorily complied with the fundamental requirements needed for the admissibility of a confession, to wit: (1) the confession must beis voluntary; (2) the confession must beis made with the assistance of competent and independent counsel; (3) the confession must beis express and (4) the confession must beis in writing.[13] It is crystalwas clear that no torture, force, violence, threat or intimidation was used against him to extract a the confession. Otayde was also assisted by Atty. Alberto Yap, a counsel of his own choice, who was vigilant in informing Otayde him of his rights. Later, appellant even affirmed his confession during the preliminary investigation before Municipal Circuit Trial Court Judge Osmundo Villanueva,[14] and in the presence of Atty. Yap. He likewise affirmed his extrajudicial confession in open court. He even described in detail how the group prepared for the assault, from their first meeting on March 25, 1997 when Commander Karon hatched the plan to attack the house of Eduardo Cejar up to the time when tthe said plan was carried out on March 29, 1997.

Pertinent portions of Otayde's confession are quoted hereunder:

Q

When did the incident happen?

A

Last March 29, 1997 between 7:00 and 8:00 o'clock in the evening.

Q

How did you know of this incident?

A

I know it sir because I was there when the incident happened.

Q

Do you know who were the suspects in that incident?

A

Yes sir, they were Commander Datu Sony Karon Ambas, a certain Sarge, Ali, Waway, Rambo, Pascual (Kua) Karon, Oting, Cabague Mama, John alias "Dog-dog," Allan alias "Doods," "Otto," Paterno Depositario alias "Boy Kamote" and the mastermind but was not present during the incident is (sic) Hadji Esmael Budi.

Q

Where did you come from before you came to Keytodak on that mission?

A

They started the plan in Babato, Tran, Lebak, Sultan Kudarat but finalized (sic) in Sitio Guintales, Poloy-Poloy, Lebak, Sultan Kudarat.

Q

Were you also in Babato when they started their plans?

A

It was only incidental that I was in Babato for collections of debts from my customers and because we were acquainted with each other, I went with them in going back to Lebak and also with them in Guintales when they finalized their plans.

Q

What was your reason why you went with them when they were planning that mission?

A

It was incidental during that time that I have a problem with my family especially with my in-laws and that was the reason why I always go with the group wherever they go and to relax my problems but never expect that on that particular day we come to the extent of going to Keytodak.

Q

Were you not informed that they have a plan to kill the Barangay Captain on that particular time?

A

None sir, what I only heard from Commander Datu Sonny Ambas Karon is to operate "Agaw Armas" since they were informed by Paterno Depositario alias " Boy Kamote" that there are many firearms in Keytodak, Lebak, Sultan Kudarat.

Q

After knowing their mission, why did you not back-out?

A

I was already afraid not to go with them because I know that I already know their activities and they might kill me.

Q

When did you start in Guintales?

A

The plans was (sic) finalized last March 25, 1997 at about 9:00 to 10:00 o'clock in the morning and they group with me (sic) left Guintales March 26, 1997 at about 7:00 o'clock in the evening. We reached Sitio Dano in the safehouse of "Boy Kamote" at about 4:00 o'clock in the morning of March 27, 1997.

Q

From 4:00 o'clock in the morning of March 27, 1997, what did you do or what were your activities?

A

We just stayed in that safehouse until March 29, 1997 and we again moved from the said safehouse at about 7:00 o'clock in the evening moving fast going to Keytodak, Lebak, Sultan Kudarat.

Q

Upon arrival in Keytodak, Lebak, Sultan Kudarat, where in particular did you proceed?

A

We surrounded the house of Barangay Captain Eduardo Cejar and it was "Boy Kamote," Cabague Mama, Rambo and Oting who entered the house and took the Radio ICOM, piggy bank and some others while Rambo was the one who actually disarmed the CVO of a Garand rifle.

Q

How about you, where were you at the time the four entered the house?

A

On the other side of the road opposite the house more or less eight to ten meters.

Q

When you arrived in the said house, was the Barangay Captain in his house?

A

None sir, he only arrived after about five minutes.

Q

In that particular incident, the Barangay Captain was shot and died on the spot, who actually shot him?

A

It was Commander Datu Sonny Karon Ambas who actually shot him sir with an armalite rifle sir.[15]

The foregoing confession is was convincing evidence of a high order since it is was supported by the strong presumption that no person of normalin his right mind would deliberately and knowingly confess to a crime, unless prompted by truth and his conscience.[16]

But wWe agree with appellants Jimmy Quintana, Cabague Mama and Kumayog Panansaran that Otayde's confession should not be taken against them. An extrajudicial confession is binding only upon the confessant on the person making it and is not admissible against his co-accused because, as against the latter, the confession is hearsay.[17]

Nonetheless, even disregarding the extrajudicial confession of Otayde, the judgment of conviction rendered by the lower court must be sustained. The counsel-assisted voluntary confession was corroborated on its material points by the prosecution witnesses, particularly Evelyn Cejar, Elizer Moniva and Rogelio Tabaosares, who were all eyewitnesses to the crime. Certainly, appellants' conviction was based not on Otayde's confession alone, but on the overwhelming evidence presented against them. Appellants' defense of denial is was intrinsically weak and cannot could not prevail over the prosecutiontheir witnesses' positive identification by the prosecution witnessesof them. The dDenials of an accused cannot be accorded greater evidentiary weight than the positive declarations of credible witnesses who testify on affirmative matters.

In imposing the death penalty on appellants, the trial court found that the circumstances of nighttime and band attended the commission of the crime.

We disagree. Section 8, Rule 110 of the Revised Rules of Criminal Procedure mandates that "the complaint or information shall specify its qualifying and aggravating circumstances." Under the old rule, only the qualifying circumstances were needed to be alleged in order to be considered as such.[18] The present rules, however, require that even aggravating circumstances, like nighttime and band, must be stated in the complaint or information. The information in the present case failed to specifically so allege that nighttime and band attended the commission of the crime.

While it is true that the Revised Rules of Criminal Procedure took effect only on December 1, 2000, and it was the old rule that was in effect at the time the crime was committed on March 29, 1997, the revised rules can be given retroactive effect insofar as it favors the accused.[19]

It is settled that procedural laws, like the Revised Rules of Criminal Procedure, may be applied retroactively. In relation to criminal law, a procedural law provides or regulates the steps by which one who has committed a crime is to be punished.[20] The retroactive application of procedural laws is not constitutionally objectionable, or violative of any right of a person adversely affected. The reason is that, as a general rule, no vested right may attach to, or arise from, procedural laws.[21]

There is thus ample basis for the retroactive application of Section 8, Rule 110 of the Revised Rules of Criminal

Procedure in this case. Inasmuch as the information failed to specify the aggravating circumstances of nighttime and band, these cannot properly be appreciated against appellants. Consequently, the penalty to be imposedable on appellants must only be reclusion perpetua.

The award of P50,000 as civil indemnity for the death of Eduardo Cejar should be upheld for being in accordance with prevailing jurisprudence.[22]

We, however, find the grant of P48,200 as actual damages not properly supported by the evidence on record. The prosecution failed to present receipts needed to justify the award. Instead, the trial court relied solely on the affidavit of burial expenses executed by the victim's wife, Evelyn Cejar, with respect to the amount incurred for burial expenses. The award of actual damages cannot be sustained solely on the basis of the allegations of a witness, without any tangible document to support such claim.[23] Nonetheless, temperate damages in the amount of P25,000 may be awarded to the heirs of the victim in line with the Court's pronouncement in the case of *People vs. Abrazaldo*. [24] Temperate damages may be granted where the amount of actual damages cannot be determined because of the absence of receipts to prove the same. When death occurs, it is reasonable to assume that the family of the victim incurred burial and funeral expenses.

Lastly, appellants should be ordered to return the amounts alleged in the information, ₱ P3,000 and P200 ₱ respectively, representing the value of money contained in Evelyn's coin bank, and the money stolen from her wallet. But the payment of P1,000 for the stolen wristwatch of the victim should be deleted.

WHEREFORE, the decision convicting appellants of robbery with homicide and assault upon a person in authority is hereby MODIFIED. Appellants are found guilty of robbery with homicide, and are accordingly sentenced to reclusion perpetua. They are hereby ordered to pay, jointly and severally, the heirs of the victim in the following amounts to the heirs of the victim: (a) P50,000 as civil indemnity, ; (b) P25,000 as temperate damages, and (c) the P3,200 representing the total amount of money stolen from the victim's family.

SO ORDERED.

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

[1] Penned by Judge German M. Malcampo, Rollo pp. 27-64.

[2] Rollo, pp. 7-8.

[3] TSN, January 29, 1998, pp. 6-7.

[4] Exhibits "D," "D-1" and "D-2," Record, pp. 11-13.

[5] Rollo, pp. 63-64.

[6] Appellants' Brief, p.2.

[7] *Ibid.*, p. 3.

[8] *People vs. Cerveto*, 315 SCRA 611 [1999].

[9] *People vs. Sorrel*, 278 SCRA 368 [1997]

[10] *People vs. Coca, Jr.*, G.R. No. 133739, May 29, 2002.

[11] *People vs. Godoy*, G.R. No. 140545, May 29, 2002.

- [12] Record, p. 201.
- [13] *People vs. Deniega*, 251 SCRA 626 [1995].
- [14] Exhibit "C," Record, pp. 116-117.
- [15] Extrajudicial confession, pp. 1-2, Record, pp. 11-13.
- [16] *People vs. Espiritu*, 302 SCRA 533 [1999].
- [17] *People vs. Camat*, 256 SCRA 52 [1996].
- [18] *People vs. Perez*, 296 SCRA 17 [1998].
- [19] Article 22, Revised Penal Code.
- [20] *People vs. Lacson*, G.R. No. 149453, April 1, 2003.
- [21] *Tan, Jr. vs. Court of Appeals*, G.R. No. 136368, January 16, 2003, 373 SCRA 524 [2002].
- [22] *People vs. Reyes*, 309 SCRA 622 [1999].
- [23] *People vs. Sanchez*, 308 SCRA 264 [1999].
- [24] G.R. No. 124392, February 4, 2003.

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