

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. FO1 FELIPE DELA CRUZ Y REYES, AUDI DONA Y BINAN, ALFREDO BARACAS Y CONCEPCION, EDUARDO PALACPAC Y ROSALES, BERNARDO RANARA Y M...

G.R. No. 168173. December 24, 2008

Ponente: BRION, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-168173/>

BRION, J.:

For our review on automatic appeal is the March 15, 2005 decision[1] of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 00570 that fully affirmed the February 9, 2000 decision[2] of the Regional Trial Court (RTC), Branch 219, Quezon City. The RTC decision found the accused-appellants Fire Officer 1 Felipe dela Cruz y Reyes (FO1 dela Cruz), Audie Dona y Binan (Audie), Alfredo Baracas y Concepcion (Alfredo), Eduardo Palacpac y Rosales (Eduardo), Bernardo Ranara y Moratalla (Bernardo), Joemari delos Reyes y Concepcion (Joemari), Dominador Recepcion y Palaso (Dominador), and Robert Alfonso y Martizano (Robert) guilty of the special complex crime of robbery with homicide and robbery in band. Accordingly, the RTC sentenced them to suffer the death penalty for robbery with homicide, and an indeterminate penalty of six (6) years prison correccional, as minimum, to ten (10) years of prison mayor, as maximum, for robbery in band.

BACKGROUND

The prosecution charged the appellants before the RTC with the special complex crime of robbery with homicide and robbery in band under two separate Informations which state:

Criminal Case No. Q-99-85787 (Robbery with Homicide)

That on or about 2:15 a.m. on July 28, 1999 in Quezon City, Philippines, and within the jurisdiction of this Honorable Court, the aforementioned accused, conspiring, confederating and mutually helping each other, did then and there willfully, unlawfully and feloniously, with intent of gain by means of force, violence and intimidation upon Joselito Herrera, Joel Dizon, Rosie Anonuevo, Kuraishi Macapundag and Edwin Gultiano Arcenas, Felipe dela Cruz and Nestor Mayagma, sales and security personnel of Seven-Eleven Convenience Store at Mindanao corner Tandang Sora Avenue, aimed their firearms at said victims and repeatedly firing the same, accused forcibly take and carry away the following described property:

Cash money amounting to P1,600.00 belonging to 7-11

Convenience Store

2 cash registers valued at P64,000.00 -do-

Cellphone cards P60,000.00 -do-

to the damage and prejudice of said owners and that, by reason or on the occasion of said robbery, accused with treachery and use of superior force, nighttime, with the use of unlicensed firearms, shot and killed Seven Eleven Security Guard NESTOR MAYAGMA and PTV 4 ELMER DUQUE, who were likewise divested of a cal. 38 Squires revolver with SN-61900 (licensed to Leopard Integrated Services, Inc.) valued at P10,000.00 and wallet with money, respectively, to the damage and prejudice of said deceased's heirs in the said amount.

CONTRARY TO LAW.[3]

Criminal Case No. Q-99-85788 (Robbery in Band)

That on or about 1:45 a.m. on July 28, 1999 in Quezon City, Philippines, and within the jurisdiction of this Honorable Court, the aforementioned accused, acting in concert, conspiring, confederating and mutually helping each other, did then and there willfully, unlawfully and feloniously, with intent of gain by means of threats, force, violence and intimidation upon Robert Laguna and Rommel Varron pump attendants of Petron Gas Station, Petron Plaza, Inc. owned by Frewinda Robosa located at Commonwealth Branch located at Commonwealth Branch, Old Balara, Quezon City, armed with unlicensed firearms, accused forcibly take, carry away and divested said establishment of cash money amounting to P8,055.00 and assorted Petron products valued at P7,000.00 to the damage and prejudice of said victim(s).

CONTRARY TO LAW.[4]

The appellants were duly arraigned, pleading "not guilty" to the charges laid.

The prosecution presented the following witnesses in the joint trial that ensued: Joel Dizon (Joel); Joselito Herrera (Joselito); Florencio Cabalbag, Jr. (Florencio); Kuraishi Makapundag (Kuraishi); Allan Taparano (Allan); Conrado Marquez, Jr. (Conrado); Rosanna Quintos-Duque (Rosanna); Ruben Labjata[5] (Ruben); Senior Police Officer 2 Bayani Gotera (SPO2 Gotera); Jesus Macalino (Jesus); Edwin Gultiano (Edwin); Rommel Varron (Rommel); Corazon Rodil Gloria (Corazon); and Police Inspector Rodrigo Salamat (P/Insp. Salamat).

The appellants, Jose Villanueva (Jose) and Fire Officer 2 Edgardo Sambo (FO2 Sambo) testified for the defense.

The RTC summarized the testimony of Joel as follows:

JOEL DIZON, 7-Eleven graveyard shift supervisor, narrated that while he was arranging the merchandise on the store gondola, he heard gunshots coming from the position of their security guard near the counter; that slowly, he crawled towards the door of the back room from where, when he looked back, he saw their guard, Nestor Mayagma, engage [sic] in a shoot-out with someone near the entrance door; that he heard about five (5) gunshots; that he went inside the back room followed by Joselito Herrera and then, through a passage, they ended up behind the Slurpee machine;[6] that through a gap between the machines, he saw a man, JOEMARI DE LOS REYES, carrying a revolver just in front of the machine and dragging the delivery boy of the Smacker's Bakeshop; that Joemari de los Reyes then went to the counter and, together with another man, FO1 FELIPE DELA CRUZ, took Rose Añonuevo, their cashier, inside the back room;[7] that the two asked her "Nasaan and may hawak ng susi?" (referring to the one who had the keys to the cash register); that when they could not find him, the two took the cash registers with them and left; that he saw six other persons who went out but was not able to recognize them as he saw their backs only; that thereafter, he heard two more gunshots; that later, when he saw the ABS-CBN people enter the store, he pushed the machine aside, came out, and saw Mayagma sprawled on the floor; that Rose Añonuevo was in the back room and was still in a state of shock; that thereafter, he called the head of their security and they checked the items; and that he noticed that the phone cards and the body sprays were missing.[8] [Italics and footnotes referring to the pertinent part of the records supplied]

Joselito, the assistant lead clerk of the 7-Eleven Convenience Store, essentially corroborated Joel's testimony. He

added that while peeping from the back of the Slurpee machine, he saw appellant Robert giving orders. Fearing for his safety, he (Joselito) bowed his head, turned his back and said a prayer. He and Joel came out from their hiding place when the media arrived ten (10) minutes after the robbery.[9] He then saw the bloodied body of their security guard, Nestor Mayagma (Nestor), sprawled on the floor. He went back to the storeroom to calm himself. Afterwards, someone told him to bring Nestor to the hospital as he was still alive. He brought Nestor to the Lanting General Hospital where the latter soon after died.[10]

Florencio, the security officer and general services supervisor of Phil-Seven Corporation, declared on the witness stand that after conducting an investigation, he found that the total items taken by the robbers amounted to P84,060.00.[11]

The RTC summarized the testimony of Kuraishi as follows:

KURAISHI MACAPUNDAG, a 29-year-old messenger of the Finance Department of PTV-4, recalled that on the early morning of July 28, 1999, he joined Elmer Duque in his car going home; that they stopped at 7-Eleven because Elmer wanted to buy "pambao" for his children; that he got off the car first and when he entered the store, he noticed a hold-up in progress because there were persons lying face down on the floor;[12] that he then came face to face with a person, BERNARDO RANARA, carrying a gun; that he walked around the store and then heard another shot; that upon hearing the shot, he went out and saw Elmer Duque bloodied and motionless on the ground; that he got scared, ran away towards the direction of Tandang Sora, heard two more shots, and eventually hid behind the trees; that after two hours, he returned to 7-Eleven but the gunmen were no longer there; and that on his way home, he heard over the radio that Elmer Duque had passed away.[13] [Italics and footnotes referring to the pertinent part of the records supplied]

Allan, a cook at King Dimsum (a restaurant adjacent to the 7-Eleven Convenience Store), narrated that at around 2:00 a.m. of July 28, 1999, while he and his three (3) co-workers were cleaning the restaurant, he heard several gunshots. When they went out, he saw Diosdado peeping through the glass panel of the 7-Eleven Convenience Store.[14] Thereafter, Diosdado pulled out a gun and entered the 7-Eleven Convenience Store; once inside, he bent a little and fired a shot. He further testified that he saw a man wearing a violet t-shirt pointing a gun at the people inside the convenience store. Afterwards, Diosdado went out towards their direction. As a result, he and his three (3) companions ran towards the kitchen of King Dimsum.[15]

From inside the kitchen, he saw Diosdado approach two (2) taxicabs parked in front of the King Dimsum, wake up the drivers, and hold them up. Diosdado then proceeded towards a passenger jeepney parked under a Sampaloc tree.[16] Suddenly, a maroon car arrived and parked near the 7-Eleven Convenience Store. The car's passenger alighted first and went inside the store. When the car's driver alighted from the car, Diosdado pointed his gun at the driver who raised his hands. At that point, Diosdado shot him in the chest. Fearing for his life, he (Allan) ran towards the bakery beside the restaurant. He heard two (2) more gunshots but did not see who fired them.[17]

Conrado, a tricycle driver plying the Paniqui, Tarlac highway, recalled that at around 5:00 a.m. of July 28, 1999, while he was waiting for passengers, a green jeepney stopped and eight (8) untidy men alighted. Four (4) of them boarded his tricycle, while the others boarded another tricycle.[18] He recalled the faces of two of his passengers - Joemari, who paid the fare, and Diosdado.[19] The men alighted at Barangay Coral, Ramos, Tarlac. Thereafter, he returned to the highway and continued to ply his route until 8:00 a.m. At around 12:00 a.m. of July 29, 1999, he returned to the highway and overheard a certain Ate Fe talking to about eight (8) persons the Caloocan Police was looking for. He approached Ate Fe and informed her that he knew something about these eight (8) men. Ate Fe relayed the information to another tricycle driver who, in turn, reported it to the police.[20] Thereafter, the Paniqui police came and brought him to the police headquarters.[21] He accompanied the police to the place where he brought his four (4) passengers. They subsequently returned to the police station where the police had a

brief meeting before returning to where he had brought his passengers.[22] He was subsequently brought to the Caloocan Police Station where he gave two (2) sworn statements. He also later identified Joemari at the police station in a police line-up of twelve (12) men.[23]

Rosanna, widow of Elmer, testified that her husband received a monthly salary of P11,400.00 working as a cameraman for PTV-4; and that she incurred P138,070.00 as expenses for the funeral and burial of her husband.[24]

The testimony of Ruben, the driver of the jeepney, appeared in the RTC's decision as follows:

RUBEN LABAJATA, a 29-year-old Waray jeepney driver plying the Monumento-Paco-Bulacan route and a resident of Taliptip, Bulacan, Bulacan, related that between 1:00 and 2:00 o'clock in the early morning of July 28, 1999, he parked his jeepney at the terminal in Dagohoy, Monumento, Kalookan City; that while he and his passengers were waiting, they suddenly heard shots coming from a nearby place; that he got scared so he decided to leave but the jeepney could not start immediately;[25] that while he was trying to do it, [sic] somebody poked a gun at him and ordered all his passengers to get out; that two of the gunman's companions sat on his right side and one on his left side while the others boarded it from the rear; that while they were moving, he looked at them, through his rear view mirror, from time to time ("nasusulyapan ko rin"); that the person who sat on his left was ROBERT ALFONSO while the two who were on his right were EDUARDO PALACPAC and AUDIE DONA; that seated behind him on the left side were BERNARDO RANARA, DOMINADOR RECEPCION, and JOEMARI DE LOS REYES while on the right were ALFREDO BARACAS and DIOSDADO RECEPCION; that from the terminal, he was ordered to drive the jeepney until they reached a Petron gas station in Quezon City where they loaded fuel; that Robert Alfonso then alighted and asked the gasoline boy where the cashier was and then the others also alighted; and that when the others returned, he noticed that they were carrying fluid.[26]

x x x x

[He] further narrated that from the gas station, they stopped by a 7-Eleven store; that the men alighted but two remained beside the jeep guarding him; that he noticed that there were two taxicabs parked then; that he then heard successive gunshots; and that the others rushed to the jeepney and he heard "kalabugan" with something like a heavy metal object "na makalansing" was being loaded.[27]

x x x x

After the carnage at 7-Eleven, [He] added that he just drove as instructed until they reached the Balintawak area where he heard that they would be going to Paniqui, Tarlac, because one of them had relatives there; that on their way, he heard the gunmen hammering the heavy object; that before reaching another Petron gas station in Bocaue, Bulacan, he was asked to slow down and then the men threw something heavy there; that it was already dawn when they reached Tarlac and he sensed that he would be done away with when he heard the word "tumba"; that he pleaded for his life telling them that he had two children and his wife was on the family way; that he was able to convince them and his life was spared on condition that he would follow their instructions; that upon reaching an intersection in Paniqui, Tarlac, the men alighted and ordered him to turn back and not to look back anymore; and that he was warned not to report to the police because if they would find out that he did, they would get back at him.[28]

x x x x

On his way back from Paniqui, Tarlac, [He] further recalled that feeling relieved, he went home to Bulacan which he reached at 10:00 o'clock in the morning; that he immediately looked for the owner of the jeepney but he could not find him; that he parked the jeepney in the garage and proceeded to their house but his wife was not there; that his relatives had learned of what happened and so when they saw each other in his sister's house, they embraced each other; that while they were talking to each other, a barangay officer came and informed

him that the police were looking for him; that they went to the police station in Bulacan, Bulacan and then to the police station in Malolos, Bulacan, where he was suspected to be one of the robbers and interrogated; that in Malolos, when it was already dark, he was picked up by a certain Major Borromeo; that he told Major Borromeo what happened and later accompanied them to Paniqui, Tarlac, where he dropped off the gunmen; that eventually, he was brought to the police station in Tarlac, Tarlac[29] where later on, BERNARDO RANARA, ROBERT ALFONSO, DOMINADOR RECEPCION, JOEMARI DE LOS REYES, ALFREDO BARACAS and AUDIE BONA were presented to him; that from Tarlac, they went back to Kalookan City where his statement was taken, and that he saw the men again including DIOSDADO RECEPCION at the PAOCTF, Camp, Crame.[30] *[Italics and footnotes referring to the pertinent part of the records supplied]*

SPO2 Gotera, a police officer assigned at the Caloocan Police Station, testified that on July 28, 1999, he received a call from Superintendent Tinio of the Malolos Provincial Command informing him that the driver and the jeepney used by the suspects in a Caloocan robbery were already in their custody.[31] Responding to this development, he went to Malolos City (together with Major Borromeo, PO2 Arnold Gonzales and Bandera reporter Yoyoy Alano) and interrogated the driver. The latter told him that a group of armed men boarded his vehicle and held-up the Petron Gasoline Station and the 7-Eleven Convenience Store along Commonwealth, and, using his vehicle, proceeded to Paniqui, Tarlac.[32]

He and his companions forthwith went to Paniqui. In coordination with the Paniqui police, they went to the place where the jeepney driver dropped off the suspects. They located Conrado - the driver of the tricycle used by four (4) of the suspects after alighting from the jeepney. Conrado led them to the compound where he brought the suspects.[33]

On July 29, 1999, at around 4:00 a.m., SPO2 Gotera, together with other members of the Tarlac police, returned to Barangay Coral, Paniqui, Tarlac and surrounded the compound previously identified by Conrado as the place where he brought the suspects. An elderly man - later identified to be the father of FO1 dela Cruz - came out and was confronted by the police. He informed the police that there were eight (8) men inside their house. The police asked him to bring out his son. He did as bidden and came out with FO1 dela Cruz who was carrying a gun but who put it down when asked to do so by the police.[34] FO1 dela Cruz thereafter told his companions to surrender but they refused to come out, prompting the police to give them an ultimatum. It was only then that the remaining seven (7) suspects came out and surrendered. They were identified as Alfredo Baracas, Audie Dona, Dominador Recepcion, Robert Alfonso, Joemari delos Reyes, Eduardo Palacpac, and Bernardo Ranara.[35]

Jesus, a tricycle driver in Paniqui, Tarlac, corroborated the testimony of Conrado on material points. He added that he recognized one of his passengers - Eduardo - because the latter took some time in paying the P5.00 fare.[36]

Edwin, delivery boy of Smacker's Bakeshop, testified that he was delivering bread to the 7-Eleven Convenience Store at Mindanao Avenue corner Tandang Sora at around 2:00 a.m. of July 28, 1999. After the security guard signed the delivery receipt, three (3) men who pretended to be customers entered the 7-Eleven Convenience Store and went to different sections of the store.[37] Suddenly, another man - FO1 dela Cruz - shot the security guard from outside the store's glass door, shattering it. In retaliation, the security guard pulled out his gun and fired back. At this point, Joemari (one of the men who had earlier entered and who was behind him) pulled him down and ordered Edwin to lie face down.[38] While the latter was in this position, Joemari took his watch and wallet.[39] He saw FO1 dela Cruz enter the store and gunshots followed afterwards. Joemari then held him and told Edwin to open the cash register. When he replied that he was not a personnel of the 7-Eleven Convenience Store, Joemari ordered him to remain lying on the floor.[40]

Rommel, a pump attendant at the Petron Gasoline Station, Commonwealth Avenue, narrated that between 1:00

and 2:00 a.m. of July 28, 1999, while he was at the gasoline station with Robert Laggua (Robert, a gasoline boy) and Randy Azurin (Randy, the station's cashier), a passenger jeepney arrived and proceeded to the third lane. While he was loading the jeepney with fuel, he recognized appellant Audie - who was seated beside the driver - and saw eight (8) other persons inside the jeepney. After the driver paid him P100.00, two of the jeepney's passengers approached him; one of them, FO1 dela Cruz, pointed a gun at him, hit him on the nape, got back the P100.00 bill, and asked him where the station's money was hidden. He told FO1 dela Cruz that the money was in the second lane's vault. Diosdado and Joemari went to the second lane and took the money from there as well as other products.[41] They also pointed a gun at Robert and Randy, brought them to the middle lane, and told them not to run or report to the police. Thereafter, they all returned to the jeepney and left.[42]

Corazon, general supervisor of Petron Gasoline Station, confirmed that the robbers took P8,000.00 and assorted Petron products worth P7,000.00 from the gas station.[43]

P/Insp. Salamat, PNP ballistics, testified that of the five (5) firearms submitted to the PNP Crime Laboratory for examination, three (3) were found to be positive, namely: caliber .38 Armscor revolver with Serial No. 51952; caliber .38 Armscor revolver with Serial No. 790006; and caliber .38 revolver Protector with Serial No. BR02982744. He explained that the term "positive" meant that the "tested fired bullet coming from the three firearms revealed the same individual characteristics as the evidence bullet recovered at the crime scene and extracted from the cadavers." [44]

The appellants gave a different version of the events.

As summarized by the RTC, Dominador, Robert, and Eduardo testified that -

DOMINADOR RECEPCION, EDUARDO PALACPAC and ROBERT ALFONSO, who introduced themselves as co-workers at Greenwoods, Cainta, Rizal, claimed that in the early morning of July 28, 1999, Dominador Recepcion and Eduardo Palacpac were at their worksite while Robert Alfonso was in Bulacan. They testified that with the intention of going to Tarlac to recruit Joemari de los Reyes to augment their manpower requirement, Dominador Recepcion and Eduardo Palacpac left Cainta at 8:00 o'clock in the morning; that at 9:00 o'clock, the two fetched Robert Alfonso in Obando, Bulacan, and the three of them arrived in Ramos, Tarlac at past noontime; that they saw Joemari in his aunt's house at Brgy. Pansi, Ramos, but they did not stay long there because they all went to Joemari's cousin's place, FO1 de la Cruz, at Brgy. Coral, Ramos;[45]

[T]hat when they reached the place, they saw only the parents of FO1 de la Cruz who told them that he was at the wake of a cousin; that after his parents had called him, FO1 de la Cruz came and said that they would slaughter a dog and drink which they did;[46] that Alfredo Baracas and Audie Dona, friends of Joemari de los Reyes, later joined them; that FO1 de la Cruz, however, did not drink; that Dominador Recepcion helped in the slaughtering of the dog and since there was a rain shower at that time, he used a match; that Robert Alfonso helped build the fire; that Eduardo Palacpac just sat around and did not help except slice the ingredients.[47]

[T]hat at 6:00 o'clock, they stopped drinking after consuming four bottles of gin and FO1 dela Cruz requested them to stay over for the night because he and Joemari had not seen each other for a long time; that the three of them went with FO1 de la Cruz and Joemari delos Reyes to the wake; that Audie Dona and Alfredo Baracas did not join; that at around 1:00 o'clock in the morning of the following day, they returned to the house of FO1 de la Cruz; that they slept in the said house until the next morning when they were awakened and apprehended by the police; that they were brought to the Paniqui Police Station and then airlifted by helicopter straight to Camp Crame where they were met by the media and police officers; that at Camp Crame, they were placed in a 12-man line-up each with numbered tags but no names; that they were repeatedly beaten before they were presented to the media; that one Atty. Rous asked them if they had been tortured and they showed him the bruises they had sustained; and that later, Atty. Rous prepared a waiver for them which they did not

understand.[48] [Footnotes referring to the pertinent part of the records supplied]

Bernardo claimed that in the evening of July 28 1999, he went to the house of FO1 dela Cruz to attend the wake of the latter's cousin. According to him, he knew FO1 dela Cruz because he had been introduced to him by Joemari. When he arrived at the house at around 8:00 p.m., FO1 dela Cruz was not yet there; however, he saw Alfredo and Audie. While waiting for FO1 dela Cruz, he fell asleep.[49] In the early morning of the next day, he was roused from sleep when the police arrived and arrested him and the other people inside the house. They were brought to the Paniqui Police Station where their pictures were taken. Thereafter, they were taken to the PAOCTF Office at Camp Crame on board a helicopter. Upon their arrival, they were presented to the reporters; afterwards, they were severely beaten, tortured and humiliated by the police.[50]

Joemari testified that in the early morning of July 28, 1999, he was sleeping at his aunt's house at Barangay Pansi, Tarlac.[51] At around 1:00 p.m., his uncle Dominador, together with Robert and Eduardo, came to see him and invited him to work with them in Cainta. He told them that he would first go to the house of his cousin FO1 dela Cruz. They proceeded together to FO1 dela Cruz's house but he was not there. When FO1 dela Cruz arrived, he introduced Dominador, Alfonso and Eduardo to him. Afterwards, they slaughtered a dog and drank four (4) bottles of gin. Afterwards, Audie and Alfredo arrived, followed by Bernardo; the three (3) then joined them in drinking gin. Thereafter, he, together with FO1 dela Cruz, Roberto, Dominador and Eduardo went to the wake of FO1 dela Cruz' cousin. They returned to the house at around 1:00 a.m. and slept there. They were roused from their sleep when the police arrived and ordered them to come out. When they came out, the police ordered them to undress and lie face down on the ground. Thereafter, they were handcuffed and brought to the Paniqui Police Station. After General Lacson arrived, they were placed on board a helicopter and taken to Camp Crame.[52]

On cross-examination, he admitted that on November 22, 1999, he tried to escape from police custody by jumping out of the Jail Management and Penology vehicle, but explained that he only followed Diosdado, Bernardo and a certain Kasoy - who all jumped out of the vehicle first.[53]

The RTC summarized the testimonies of Alfredo and Audie in this manner:

ALFREDO BARACAS and AUDIE DONA were neighbors in Pasig City and both claimed that on the early morning of July 28, 1999, they were in Villacorta, Mabini, Pangasinan because the grandmother of Baracas was dying. They further narrated that at past 11:30 o'clock of that day, while they were preparing to go back to Manila, Baracas told Audie Dona that they would pass by Tarlac to see his cousin, Joemari de los Reyes, because the latter had plenty of vegetables and fish and he wanted to bring some to Manila;[54] that at past noontime, they arrived at the place of Joemari but he was not there; that his aunt said that he was at the fishpond so they followed him there; that later, they went to the house of FO1 Felipe de la Cruz where they saw Joemari de los Reyes with FO1 de la Cruz, Roberto Alfonso, Dominador Recepcion and Eduardo Palacpac; that after the group had finished their drinks, they left to attend a wake;[55] that the two of them did not go with the group and, instead, went back to the house of Joemari's aunt to inform her that they would sleep in the house of FO1 de la Cruz; that they returned to the house of FO1 de la Cruz at around 5:00 o'clock in the morning of July 29 and slept there; that they were awakened when Felipe de la Cruz was called by his father; and that thereafter, they were arrested by the police.[56] [Footnotes referring to the pertinent part of the records supplied]

FO1 dela Cruz narrated that in the afternoon of July 28, 1999, Joemari, Dominador, Eduardo and Alfonso arrived at his house. Since he and Joemari had not seen each other for a long time, they slaughtered a dog and drank liquor. Alfredo and Audie arrived at around 3:00 p.m., followed by Bernardo at around 8:00 p.m. He invited them to go to the wake of his cousin, but only four (4) accompanied him - Joemari, Eduardo, Dominador and Robert.[57] They returned home at around 1:00 a.m. and then went to sleep. A few hours later, he heard his father ordering him to come out of the house. When he came out, the policemen asked him to put down his gun and to

order his companions inside the house to likewise come out. When his remaining seven (7) companions came out, the police ordered them to strip in the middle of the road and then handcuffed them. Afterwards, they were brought to the Paniqui Police Station. When General Lacson arrived, they were airlifted by helicopter to Camp Crame where they were presented to the media. They were subsequently brought to the laboratory for fingerprinting and taking of urine samples.[58]

On cross-examination, he denied knowing any of the appellants prior to their arrest on July 29, 1999, except his cousin, Joemari.[59]

The defense presented Jose and FO2 Sambo as additional witnesses.

Jose, a 36 year-old farmer from Ramos, Tarlac, narrated that at around 7:00 p.m. of July 27, 1999, while he was at the wake of Marcial de Vera, FO1 dela Cruz arrived. He and FO1 dela Cruz left the next day at around 4:00 a.m. When he returned to the wake at around 8:00 p.m. on July 28, 1999, he again saw FO1 dela Cruz. On cross-examination, he admitted that FO1 dela Cruz is his cousin.[60]

FO2 Sambo testified that in the morning of July 29, 1999, while he was at the Office of the Fire Marshal, his brother informed him that FO1 dela Cruz was under detention at the Paniqui Police Station. He went to Paniqui to confirm the information and reported his findings to the provincial office. Afterwards, the Bureau of Fire Protection directed him to investigate the involvement of FO1 dela Cruz in the robbery. After interviewing FO1 dela Cruz and several other people (including the parents of FO1 dela Cruz, his live-in partner, and the vice-mayor of Ramos, Tarlac), he concluded that FO1 dela Cruz was not involved in the recent robbery/hold-up and was not a coddler of criminals.[61]

As a side development, Diosdado, Alfredo, Bernardo, Joemari, Dominador and Robert escaped from their escorts after their hearing on November 22, 1999 while on their way back to the Quezon City Jail. Joemari, Dominador, Alfredo, and Robert were immediately apprehended; Diosdado was fatally wounded and later died, while Bernardo still remains at large.[62]

The RTC convicted the appellants of the crimes charged in its decision of February 9, 2000 as follows:

WHEREFORE, in Criminal Case No. Q99-85787 (Robbery with Homicide) finding all the accused, FO1 Felipe de la Cruz, Robert Alfonso, Audie Dona, Alfredo Baracas, Eduardo Palacpac, Bernardo Ranara, Joemari de los Reyes, and Dominador Recepcion, guilty beyond reasonable doubt of the crime charged in the Information, the Court hereby sentences each of them

a]

to suffer the penalty of Death;

b]

to pay, jointly and severally, the heirs of Elmer Duque the amount of P138,070.00 as actual damages; P500,00.00 as moral damages; P75,000.00 as indemnity for his death; P500,000.00 as exemplary damages; and P1,846,800.00 for the loss of his earning capacity plus interest from the time of his death at the rate of six (6%) percent per annum;

c]

to pay, jointly and severally, the heirs of Nestor Mayagma, the amount of P75,000.00 as indemnity for his death; P100,000.00 as moral damages; and P50,000.00 as exemplary damages;

d]

to pay 7-Eleven Convenience Store, the amount of P84,060.00 plus interest from the date of the commission of the crime at the rate of six (6%) percent per annum; and

e]

to pay the costs.

In Criminal Case No. Q99-85788 (Robbery in Band), finding all the accused, FO1 Felipe de la Cruz, Robert Alfonso, Audie Dona, Alfredo Baracas, Eduardo Palacpac, Bernardo Ranara, Joemari de los Reyes, and Dominador Recepcion, guilty beyond reasonable doubt of the crime charged in the Information, the Court hereby sentences each of them

a]

to suffer the indeterminate penalty of imprisonment ranging from SIX (6) YEARS of Prision Correccional, as minimum, to TEN (10) YEARS of Prision Mayor, as maximum;

b]

to pay Petro Plaza, Inc. the amount of P8,000.00 plus interest from the date of the commission of the crime at the rate of six percent (6%) per annum; and

c]

to pay the costs.

SO ORDERED.[63]

The RTC denied the appellants' motion for reconsideration in its resolution[64] of April 17, 2000.

The case was brought to this Court on automatic appeal in light of the penalty imposed, but we remanded it to the CA for intermediate appellate review pursuant to our ruling in *People v. Mateo*.[65]

The CA, in a decision[66] dated March 15, 2005, fully affirmed the RTC decision.

In their brief,[67] the appellants argued that the RTC erred -

- in imposing the penalty of death upon them because treachery and abuse of superior strength were not proven; and

- in finding all the accused, even those who did not take active part, equally liable for the crime of robbery with homicide.

The twin issues for our resolution are:

(a) whether the appellants' guilt of the crimes charged was proven beyond reasonable doubt; and

(b) if they are guilty, whether the trial court imposed the correct penalties and awarded the proper civil indemnities.

THE COURT'S RULING

We deny the appeal, but modify the penalties imposed and the amount of the awarded indemnities.

Sufficiency of the Prosecution Evidence

I. Criminal Case No. Q-99-85788 (Robbery in Band)

A reading of the cited errors reveals that the appellants no longer contest their conviction for robbery in band. Nevertheless, since an appeal opens the whole case for review, we deem it necessary to review the appellants' conviction as well as the corresponding penalty imposed and the civil indemnities awarded.

The elements of the crime of robbery under Article 293[68] of the Revised Penal Code are: (a) the unlawful taking (b) of personal property belonging to another (c) with intent to gain, and (d) with violence against or intimidation of person or force upon things. Under Article 296 of the same Code, "when more than three armed malefactors take part in the commission of robbery, it shall be deemed to have been committed by a band." [69]

In the present case, the prosecution witnesses, at one time or another during the hearing, testified that Joemari, Bernardo, Diosdado and FO1 dela Cruz were all armed. However, we cannot recognize the commission of robbery by a band as an aggravating circumstance since this circumstance was not specifically alleged in the body of the Information. Section 8, Rule 110 of the 2000 Rules on Criminal Procedure provides that the information or complaint must state the designation of the offense given by the statute and specify its qualifying and generic aggravating circumstances, thus:

Section 8. Designation of the offense.- The complaint or information shall state the designation of the offense given by the statute, aver the acts or omissions constituting the offense, and specify its qualifying and aggravating circumstances. If there is no designation of the offense, reference shall be made to the section or subsection of the statute punishing it.

Other than on this aspect of the case, we find the trial court's factual findings and conclusions in Criminal Case No. Q-99-85788 to be correct. As the trial court found, the witnesses were straightforward in their account of the robbery that occurred at Petron Gasoline Station along Commonwealth, Quezon City, and never wavered in pointing to the appellants as the perpetrators.

Ruben, the driver of the vehicle the appellants used and who saw the robberies from the start to its bloody end, positively and with full details identified in his testimony of September 28, 1999 the appellants Robert, Eduardo, Audie, Bernardo, Dominador, Joemari, Alfredo, and Diosdado as the robbers. At gunpoint, they boarded his jeepney in Monumento; ordered him to refuel at Petron Gas Station in Commonwealth, Quezon City and robbed this establishment; and then ordered him to stop at the 7-Eleven Convenience Store along Mindanao and Tandang Sora Avenue for another robbery.[70] Rommel, in his testimony of October 21, 1999, corroborated the testimony of Ruben and likewise gave his own details of how the robbery was committed. He identified Audie, FO1 dela Cruz, Diosdao and Joemari as the passengers of the jeepney whom he recognized.[71]

These testimonies, which we considered in light of the appellants' defenses discussed below, more than amply constitute proof beyond reasonable doubt that the appellants are guilty of the crime of robbery as charged.

II. Criminal Case No. Q-99-85787 (Robbery with Homicide)

There is robbery with homicide when a homicide is committed either by reason, or on occasion, of the robbery.[72] To sustain a conviction for robbery with homicide, the prosecution must prove the following elements: (1) the taking of personal property belonging to another; (2) with intent to gain; (3) with the use of violence or intimidation against a person; and (4) on the occasion or by reason of the robbery, the crime of homicide, as used in its generic sense, was committed.[73] A conviction requires certitude that the robbery is the main purpose and objective of the malefactor and the killing is merely incidental to the robbery.[74] The intent to rob must precede the taking of human life but the killing may occur before, during or after the robbery.[75]

In the case before us, the prosecution proved that the appellants' original intention was to rob the 7-Eleven Convenience Store. A careful examination of the testimonies of the various prosecution witnesses, all of them

cited above, reveals the following facts showing the appellants' intent: appellants Joemarie, Bernardo and Robert entered the 7-Eleven Convenience Store pretending to be customers; witness Kuraishi entered the store and met appellant Bernardo, who was carrying a gun; Elmer, who went out of his car to follow Kuraishi, was shot in the chest by Diosdado; appellant FO1 dela Cruz fired at the security guard, Nestor, through the glass door but missed; Nestor exchanged shots with FO1 dela Cruz; Joemari pulled down Edwin and took his wallet and watch; Diosdado peeped through the glass panel of the 7-Eleven Convenience Store, shot Nestor and entered the store; Joemari dragged Edwin towards the counter and told him to open the cash register; Diosdado went outside the store, approached the two (2) taxis parked in front of King Dimsum and held up the drivers; FO1 dela Cruz entered the store, dragged the cashier, Rose, towards the backroom and asked who kept the keys of the cash register; Joemarie, Bernardo, Robert and FO1 dela Cruz took the cash register and went back to their companions who were waiting inside the jeepney; thereafter, appellants proceeded to Paniqui, Tarlac.

From the foregoing, the overriding intention of the appellants could not but be to rob the 7-Eleven Convenience Store; the killings were merely incidental, resulting by reason or on the occasion of the robbery. Nestor was killed because he was the man who would have resisted the robbery; Elmer was killed because he simply happened to be there as the robbery was taking place.

Aside from the testimony of Ruben,[76] other witnesses positively identified the appellants as the persons who went to the 7-Eleven Convenience Store on that fateful morning of July 28, 1999. Joel (the 7-Eleven Convenience Store Supervisor), in his testimony on September 2, 1999, pointed to appellants Joemari and FO1 dela Cruz as the persons who entered and robbed the 7-Eleven Convenience Store.[77] Joselito (the Assistant Lead Clerk of the 7-Eleven Convenience Store), in his testimony of September 6, 1999, corroborated the testimony of Joel and added that he saw appellant Robert inside the 7-Eleven Convenience Store.[78] Kuraishi (the companion of Elmer), in his September 9, 1999 testimony, confirmed the presence of appellant Bernardo inside the 7-Eleven Convenience Store.[79] Allan (the cook of King Dimsum), for his part, positively identified Diosdado as the one who fatally shot Elmer.[80] Finally, Edwin (the delivery boy), confirmed the presence of appellant Joemari inside the 7-Eleven Convenience Store, and identified appellant FO1 dela Cruz as the person who fired shots at the store's security guard.[81]

Denial and Alibi

In stark contrast with the prosecution's case are the appellants' weak and uncorroborated defenses. They interposed alibi and denial to support their claim of innocence.

Robert, Eduardo and Dominador all alleged that they went to Tarlac in the afternoon of July 28, 1999 to recruit Joemari as a worker in the construction site where they were working. When they reached the house of Joemari's aunt, they claimed to have seen Audie and Alfredo. This is contrary to the claim of Audie and Alfredo who claimed to have seen them only at the house of FO1 dela Cruz.

The testimonies of Audie and Alfredo were likewise full of inconsistencies: Alfredo claimed that they arrived at Tarlac at past 2:00 p.m. of July 28, 1999, while Audie alleged that they arrived at noontime; Alfredo stated that they saw Joemari at the house of FO1 dela Cruz and then went to the fishpond to drink, while Audie claimed that they first went to the fishpond to have some drinks and then proceeded to the house of FO1 dela Cruz where they saw Joemari.

Joemari insisted that he was sleeping in the house of his aunt in Tarlac at the time of the robbery. His story, however, remains uncorroborated. Bernardo, for his part, maintained that he went to Tarlac on July 28, 1999 at 3:00 p.m. to attend the wake of FO1 dela Cruz's cousin. Incredibly, he did not know the name of the deceased nor could he remember the name of the person who informed him of the death of the deceased.

FO1 dela Cruz, a central figure in the robbery, denied knowing any of the appellants (except his cousin Joemari) before July 29, 1999; surprisingly, he allowed all the appellants to sleep in his house.

We have repeatedly held that for the defense of alibi to prosper, the accused must prove not only that he was at some other place at the time the crime was committed, but that it was likewise impossible for him to be at the locus criminis or its immediate vicinity at the time of the alleged crime. Where there is the least chance for the accused to be present at the crime scene, the defense of alibi must fail.[82]

In this case, the appellants claimed to have gone to Tarlac in the afternoon of July 28, 1999. However, they could not account for their whereabouts at past 12:00 a.m. on July 28, 1999 when the crime was committed. The appellants failed to prove that it was physically impossible for them to be at the scene of the crime at the approximate time of its commission.

The appellants' denial must likewise fail in light of the positive identification and declarations made by the prosecution witnesses. These witnesses testified in a straightforward and categorical manner regarding the identities of the malefactors. They did not waver despite the grueling and extensive questions fielded by the defense; they likewise remained consistent and steadfast despite the defense counsel's rigid questioning.

Courts generally view the defenses of denial and alibi with disfavor on account of the facility with which an accused can concoct them to suit his defense. As both evidence are negative and self-serving, they cannot attain more credibility than the testimonies of prosecution witnesses who testify clearly, providing thereby positive evidence on the various aspects of the crime committed.[83] Among such positive evidence are the paraffin tests conducted on the appellants which revealed that four (4) of them - Joemari, Dominador, Diosdado and FO1 dela Cruz - were positive for gunpowder nitrate. In addition, the ballistic examination on the gun owned by Diosdado showed that the bullets recovered from the body of Elmer were fired from his gun.

On the whole, we view the evidence against accused-appellants to be overwhelming. We find no reason to deviate from the findings of the trial court in the absence of facts or circumstances of real weight that might have been overlooked or misapprehended.[84] The trial court had the unique opportunity of observing firsthand the witnesses as they testified and were cross-examined, and it was therefore in the best position to assess whether these witnesses were telling the truth or not. The substance of the testimonies for the prosecution were as the trial court found and intrinsically merits full faith and credence. The defense, on the other hand, provided no facts and circumstances of weight and substance sufficient to cast doubt on the trial court's evaluation of the credibility of the prosecution's witnesses.[85]

The presence of conspiracy

Conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. Conspiracy may be inferred from the acts of the accused before, during, and after the commission of the crime which indubitably point to and are indicative of a joint purpose, concert of action and community of interest.[86] For conspiracy to exist, it is not required that there be an agreement for an appreciable period prior to the occurrence; it is sufficient that at the time of the commission of the offense, the malefactors had the same purpose and were united in its execution.[87]

From the circumstances obtaining in this case, it cannot be doubted that the appellants acted in conspiracy in committing the crimes charged. The appellants were together in the jeepney when it stopped at Petron Gasoline station and then at the 7-Eleven Convenience Store. Afterwards, they were still together in the jeepney when it went to Tarlac. From the time they announced a robbery at Petron to the moment they entered the 7-Eleven Convenience Store and shot the store's security guard, up to the time they fled towards Tarlac, there can be no

other conclusion than that they hatched a criminal scheme, synchronized their acts for unity in its execution, and aided each other for its consummation.[88]

When conspiracy or action in concert to achieve a criminal design is shown, the act of one is the act of all the other conspirators, and the precise extent or modality of participation of each of them becomes secondary.[89]

Corollarily, the rule is well-established that whenever homicide has been committed as a consequence of or on the occasion of a robbery, all those who took part as principals in the robbery will also be held guilty as principals of the special complex crime of robbery with homicide although they did not actually take part in the homicide, unless it clearly appears that they endeavored to prevent the homicide. In the present case, it has not been shown that the appellants tried to prevent the shooting of the two (2) victims. Hence, their cooperative acts toward their common criminal objective render them equally liable as conspirators.[90]

The Proper Penalties

For the crime of simple robbery, Article 294, paragraph 5, prescribes the penalty of prision correccional in its maximum period to prision mayor in its medium period. Applying the Indeterminate Sentence Law, and in the absence of any mitigating or aggravating circumstances, the maximum penalty to be imposed shall be taken from the medium of the impossible penalty which is prision mayor minimum and whose range is six (6) years and one (1) day to eight (8) years, following Article 64(1)[91] of the Revised Penal Code. The minimum, on the other hand, shall be taken from the penalty next lower in degree which is arresto mayor in its maximum period to prision correccional in its medium period, whose range is from four (4) months and one (1) day to four (4) years and two (2) months, in accordance with Article 61(4)[92] of the Revised Penal Code.

For the crime of robbery with homicide, Article 294, paragraph 1 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. x x x x

In convicting the appellants of the crime of robbery with homicide, the courts a quo appreciated treachery. There is treachery when the following essential elements are present, viz: (a) at the time of the attack, the victim was not in a position to defend himself; and (b) the accused consciously and deliberately adopted the particular means, methods or forms of attack employed by him. The essence of treachery is the sudden and unexpected attack by an aggressor on the unsuspecting victim, depriving the latter of any chance to defend himself and thereby ensuring its commission without risk to himself. Treachery may also be appreciated even if the victim was warned of the danger to his life where he was defenseless and unable to flee at the time of the infliction of the coup de grace.[93]

In the present case, the evidence clearly shows that as Joemari, Bernardo and Robert entered the 7-Eleven Convenience Store, FO1 dela Cruz already positioned himself outside the store's glass door and prepared to shoot Nestor to ensure lack of resistance to their robbery plans. While Nestor was exchanging shots with FO1 dela Cruz, Diosdado peeped through the glass panel and fired at Nestor - fatally hitting him. Under these facts, we find it clear that the appellants prepared to kill the victim in a manner that would ensure the execution of the crime or make it impossible or hard for the victim to defend himself; he was immediately shot at from outside the store, with a fallback position in case this first attempt to immobilize him failed.

We rule, however, that the killing of the other victim, Elmer, was not attended by treachery as there was no evidence that Diosdado had resolved to shoot him prior to the moment of the killing, or that his death was the result of premeditation, calculation or reflection.

Considering the presence of the aggravating circumstance of treachery with no attendant mitigating circumstance, the trial court correctly sentenced the appellant to suffer the death penalty, conformably with Article 63, paragraph 1 of the Revised Penal Code.[94] In view, however, of the enactment on June 24, 2006 of Republic Act No. 9346 which prohibits the imposition of death penalty in the Philippines, we reduce the penalty of death to reclusion perpetua without eligibility for parole.[95]

Civil Liability

Criminal Case No. Q-99-85788

The RTC ordered the appellants to pay only P8,000.00, or the amount of the cash taken from the gasoline station. However, the evidence on record reveals that assorted Petron fuel products amounting to P7,000.00 were also taken. Hence, we order the appellants to likewise restitute these items or to pay their monetary value, if restitution cannot be made.

Criminal Case No. Q-99-85787

For the death of Elmer and Nestor, we sustain the award of P75,000.00 as civil indemnity ordered by the RTC and affirmed by the CA. The award for civil indemnity is mandatory and is granted to the heirs of the victim without need of proof other than the commission of the crime. The amount of P75,000.00 as civil indemnity is awarded if the crime is qualified by circumstances warranting the imposition of the death penalty. Though the penalty imposed on appellant was reduced to reclusion perpetua, the civil indemnity award remains at P75,000.00.[96]

The award of P500,000.00 and P100,000.00 as moral damages to the heirs of Elmer and Nestor, respectively, is not in accordance with recent jurisprudence.[97] We accordingly reduce the amounts to P50,000.00.

Indemnity for the loss of earning capacity is determinable under established jurisprudence based on the net earning capacity of the victim computed under the formula:

Net Earning Capacity = $\frac{2}{3} \times (80 \text{ less the age of the victim at the time of death}) \times (\text{Gross Annual Income less the Reasonable and Necessary Living Expenses})$

The records show that Elmer's annual gross income was P136,800.00 computed from his monthly rate of P11,400.00. His reasonable and necessary living expenses are estimated at 50% of this gross income, leaving a balance of P68,400.00. His life expectancy, on the other hand, is assumed to be $\frac{2}{3}$ of age 80 less 38, his age at the time of death. Applied to the above formula, these data yield the net earning capacity loss of P1,915,200.00. The RTC award must thus be increased to this amount.

In the absence of supporting evidence, we cannot award loss of earning capacity to Nestor's heirs.

The award of exemplary damages is justified by the duly proven qualifying circumstance of treachery. The lower courts, however, awarded exemplary damages to the heirs of Elmer and Nestor in the amounts of P500,000.00 and P50,000.00, respectively. To conform with prevailing jurisprudence, we reduce these amounts to P25,000.00 for each set of heirs.[98]

The RTC awarded P138,070.00 as actual damages to the heirs of Elmer. It appears that out of this amount, only P61,635.00 was supported by receipts. The difference in the amounts was based solely on the submissions by Elmer's widow. For one to be entitled to actual damages, it is necessary to prove the actual amount of loss with a

reasonable degree of certainty, premised upon competent proof and the best evidence obtainable by the injured party.[99] Hence, we reduce the awarded actual damages to P61,635.00.

We note that the RTC did not award actual damages to the heirs of Nestor for lack of evidence. In *People v. Abrazaldo*,^[100] we held that where the amount of the actual damages cannot be determined because of the absence of supporting receipts but entitlement is shown under the facts of the case, temperate damages in the amount of P25,000.00 may be awarded. Thus, in lieu of actual damages, we award temperate damages of P25,000.00 to the heirs of Nestor.

We affirm the order of the RTC to restitute the amount of P84,060.00 to the 7-Eleven Convenience Store. This was the amount taken in the robbery as proven by evidence. We delete, however, the interest that the RTC imposed.

WHEREFORE, in light of all the foregoing, We hereby AFFIRM the March 15, 2005 decision of the CA in CA-G.R. CR-H.C. No. 00570 with the following MODIFICATIONS:

I. In Criminal Case No. Q-99-85787

(1)

the penalty of death imposed on the appellants is REDUCED to reclusion perpetua without eligibility for parole;

(2)

the moral damages awarded to the heirs of Elmer and Nestor are REDUCED to P50,000.00, respectively;

(3)

the exemplary damages awarded to the heirs of Elmer and Nestor are REDUCED to P25,000.00, respectively;

(4)

the actual damages awarded to the heirs of Elmer are REDUCED to P61,635.00;

(5)

the appellants are ORDERED to pay, jointly and severally, the heirs of Nestor P25,000.00 as temperate damages;

(6)

the indemnity for Elmer's loss of earning capacity is INCREASED to P1,915,200.00; and

(7)

the appellants are ORDERED to restitute the 7-Eleven Convenience Store in the amount of P84,060.00.

II. In Criminal Case No. Q-99-85788

(1)

the appellants are found GUILTY beyond reasonable doubt of simple robbery, instead of robbery in band, and each is SENTENCED to suffer the indeterminate penalty of four (4) months and one (1) day of arresto mayor maximum, as minimum, to six (6) years and one (1) day of prision mayor minimum, as maximum; and

(2)

the appellants are ORDERED to restitute to Petron Plaza, Inc. the assorted Petron products or to pay their

monetary equivalent of P7,000.00, if restitution cannot be made; and the amount of P8,000.00 representing the stolen money.

SO ORDERED.

Puno, C.J., Quisumbing, Ynares-Santiago, Carpio, Austria-Martinez, Corona, Carpio-Morales, Azcuna, Tinga, Chico-Nazario, Velasco, Jr., Nachura, and Reyes, JJ., concur.
Leonardo-De Castro, J., on leave.

[1] Penned by then Associate Justice (now Presiding Justice) Conrado M. Vasquez, Jr., and concurred in by Associate Justice Rebecca de Guia-Salvador and Associate Justice Aurora Santiago-Lagman; rollo, pp. 3-22.

[2] Penned by Judge Jose Catral Mendoza; CA rollo, pp. 39-67.

[3] CA rollo, pp. 6-7.

[4] Id., pp. 11-12.

[5] In some parts of the record, his name appears as Ruben Labajata.

[6] TSN, September 2, 1999, pp. 7-11.

[7] Id., pp. 12-16.

[8] Id., pp. 18-23.

[9] TSN, September 6, 1999, pp. 8-9.

[10] Id., pp. 10-11.

[11] TSN, September 9, 1999, p. 6.

[12] Id., pp. 12-14.

[13] Id., pp. 15-18.

[14] TSN, September 16, 1999, pp. 4-5.

[15] Id., pp. 6-7.

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

[17] Id., pp. 10-13.

[18] Id., pp. 36

[19] Id., p. 51.

[20] Id., p. 41.

[21] Id., p. 45.

[22] Id., pp. 49-50.

[23] Id., pp. 52-54.

[24] TSN, September 23, 1999, p. 8.

- [25] TSN, September 28, 1999, p. 12.
- [26] *Id.*, pp. 13-23.
- [27] *Id.*, pp. 24-25.
- [28] *Id.*, pp. 27-29.
- [29] *Id.*, pp. 30-35.
- [30] *Id.*, pp. 50-55.
- [31] TSN, September 30, 1999, pp. 14-15.
- [32] *Id.*, pp. 16-20.
- [33] *Id.*, pp. 20-23.
- [34] *Id.*, pp. 26-28.
- [35] *Id.*, pp. 30-33.
- [36] TSN, October 7, 1999, pp. 27-28.
- [37] TSN, October 14, 1999, pp. 15-16.
- [38] *Id.*, pp. 17-18.
- [39] *Id.*, p. 39.
- [40] *Id.*, pp. 18-20.
- [41] TSN, October 21, 1999, pp. 3-5.
- [42] *Id.*, p. 6.
- [43] TSN, October 25, 1999, pp. 6-7.
- [44] TSN, December 6, 1999, pp. 9-12.
- [45] TSN, November 10, 1999, pp. 24-25; TSN, November 18, 1999, pp. 7-9.
- [46] TSN, November 10, 1999, pp. 26-28; TSN, November 18, 1999, p. 10.
- [47] TSN, November 11, 1999, pp. 5-7.
- [48] TSN, November 11, 1999, pp. 8-12; November 18, 1999, pp. 12-16.
- [49] TSN, November 22, 1999, pp. 5-6.
- [50] *Id.*, pp. 7-11.
- [51] TSN, November 25, 1999, p. 11.
- [52] *Id.*, pp. 15-20.
- [53] TSN, November 29, 1999, pp. 17-18.
- [54] TSN, November 29, 1999, pp. 16-18; TSN, December 6, 1999, p. 5.
- [55] TSN, November 29, 1999, pp. 19-23; TSN, December 6, 1999, pp. 6-7.

- [56] TSN, November 29, 1999, pp. 27-30; TSN, December 6, 1999, pp. 23-24.
- [57] TSN, December 8, 1999, pp. 7-12.
- [58] Id., pp. 15-28.
- [59] Id., pp. 32-33.
- [60] TSN, November 29, 1999, pp. 5-6.
- [61] TSN, December 2, 1999, pp. 6-15.
- [62] Records, p. 262.
- [63] CA rollo, pp. 66-67.
- [64] Id., pp. 161-164.
- [65] G.R. Nos. 147678-87, July 7, 2004, 433 SCRA 640.
- [66] Rollo, pp. 3-22.
- [67] CA rollo, pp. 98-131.
- [68] ART. 293. Who are guilty of robbery. - Any person who, with intent to gain, shall take any personal property belonging to another, by means of violence against or intimidation of any person, or using force upon anything, shall be guilty of robbery.
- [69] People v. Lumiwan, G.R. Nos. 122753-56, September 7, 1998, 295 SCRA 215, 225.
- [70] TSN, September 28, 1999, pp. 11-27.
- [71] TSN, October 21, 1999, pp. 3-16.
- [72] People v. Mendoza, G.R. No. 115809, January 23, 1998, 284 SCRA 705.
- [73] People v. Barreta, G.R. No. 120367, October 16, 2000, 343 SCRA 199.
- [74] People v. Daniela, G.R. No. 139230, April 24, 2003, 401 SCRA 519, 534.
- [75] People v. Escote, Jr., G.R. No. 140756, April 4, 2003, 400 SCRA 603, 630.
- [76] TSN, September 28, 1999, pp. 7-77.
- [77] TSN, September 2, 1999, pp. 14-16.
- [78] TSN, September 6, 1999, pp. 2-17.
- [79] TSN, September 9, 1999, pp. 12-25.
- [80] TSN, September 16, 1999, pp. 6-19.
- [81] TSN, October 14, 1999, pp. 15-41.
- [82] People v. Werba, G.R. No. 144599, June 9, 2004, 431 SCRA 482, 495.
- [83] Id., p. 496.
- [84] See People v. Mariñas, G.R. Nos. 97953-56, September 14, 1995, 248 SCRA 165.

[85] See *People v. Cabbab, Jr.*, G.R. No. 173479, July 12, 2007, 527 SCRA 589, 601.

[86] *People v. Porras*, G.R. Nos. 103550-51, July 17, 2001, 361 SCRA 246, 271.

[87] *People v. Carrozo*, G.R. No. 97913, October 12, 2000, 342 SCRA 600.

[88] See *People v. Napalit*, G.R. Nos. 142919 and 143876, February 4, 2003, 396 SCRA 687.

[89] *People v. Punzalan*, G.R. No. 78853, November 8, 1991, 203 SCRA 364.

[90] See *People v. Sabadao*, G.R. No. 126126, October 30, 2000, 344 SCRA 432.

[91] Art. 64. Rules for the application of penalties which contain three periods. - In cases in which the penalties prescribed by law contain three periods, whether it be a single divisible penalty or composed of three different penalties, each one of which forms a period in accordance with the provisions of Articles 76 and 77, the courts shall observe for the application of the penalty the following rules, according to whether there are or are no mitigating or aggravating circumstances:

- When there are neither aggravating nor mitigating circumstances, they shall impose the penalty prescribed by law in its medium period. x x x x

[92] Art. 61. Rules for graduating penalties. - For the purpose of graduating the penalties which, according to the provisions of Articles 50-57, inclusive, of this Code, are to be imposed upon persons guilty as principals of any frustrated or attempted felony, or as accomplices or accessories, the following rules shall be observed:

x x x x

- When the penalty prescribed for the crime is composed of several periods, corresponding to different divisible penalties, the penalty next lower in degree shall be composed of the period immediately following the minimum prescribed and of the next two following, which shall be taken from the penalty prescribed, if possible; otherwise, from the penalty immediately following in the above-mentioned respective graduated scale. x x x

[93] *People v. Escote*, supra.

[94] ART. 63. Rules for the application of indivisible penalties.

x x x

- When in the commission of the deed there is present only one aggravating circumstance, the greater penalty shall be applied. x x x x

[95] See *People v. Jabiniao*, G.R. No. 179499, April 30, 2008.

[96] Id.

[97] *People v. Cabbab, Jr.*, supra.

[98] *People v. Tolentino*, G.R. No. 176385, February 26, 2008.

[99] *People v. Sorila, Jr.*, G.R. No. 178540, June 27, 2008.

[100] G.R. No. 124392, February 7, 2003, 397 SCRA 137.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.