

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JOSE D. LARA @ JOSE KALBO, ACCUSED-APPELLANT.

G.R. NO. 171449. October 23, 2006

Ponente: CHICO-NAZARIO, J.

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CHICO-NAZARIO, J.:

For review is the Decision[1] of the Court of Appeals in CA-G.R. CR-H.C. No. 01140 which affirmed with modification the Decision[2] of the Regional Trial Court (RTC) of Caloocan City, Branch 128, finding accused-appellant guilty of Robbery with Homicide, Qualified Illegal Possession of Firearm and Robbery.

On 31 January 1997, appellant Jose D. Lara, a.k.a. Joe Kalbo, was charged with Robbery with Homicide, Qualified Illegal Possession of Firearm and Robbery in Criminal Cases Nos. 97-13706, 97-13707 and 97-13708, respectively, before the RTC of Antipolo, Rizal, under the following Informations:

CRIM. CASE NO. 97-13706

That on or about the 27[th] day of January, 1997, in the Municipality of Antipolo, Province of Rizal, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused with intent of gain and by means of violence, force and intimidation, did then and there willfully, unlawfully and feloniously take, steal and carry away from Chito B. Arizala and divest him of a NORINCO 12 Gauge Shotgun with Serial No. 9600942, while the latter was in the performance of his duties as a Security Guard of Taurus Security Agency and Allied Services, without the consent of said Chito Arizala nor of the owner of the shotgun, Napoleon Y. Arnaiz, operator of said security agency, to the damage of the latter in the amount of P11,900.00 representing the value of the said shotgun, and by reason or on the occasion of the said robbery, and in pursuit of his evil intent and to defend possession of the stolen shotgun, said accused with intent to kill, and with treachery and evident premeditation, did then and there willfully, unlawfully and feloniously shot said Chito B. Arizala inflicting (sic) upon the latter mortal injuries thereby causing his instantaneously death.[3]

CRIM. CASE NO. 97-13707

That on or about the 27[th] day of January 1997 in the Municipality of Antipolo, Province of Rizal, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused with intent to possess firearms with ammunition, and without authority or license to possess said firearms, nor permit to carry them outside his residence, did then and there willfully, unlawfully and feloniously have in his custody, control and possession a pistol of still unknown make and caliber and a NORINCO 12 Gauge shotgun with Serial No. 9600947 and having said firearms in his possession, did then and there willfully, unlawfully and feloniously use the same in killing Chito B. Arizala.[4]

CRIM. CASE NO. 97-13708

That on or about the 27[th] day of January 1997 in the Municipality of Antipolo, Province of Rizal, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with intent of gain and by means of force, violence and intimidation, did then and there willfully, unlawfully and feloniously rob and divest Chito Arizala of and take away from him, while the latter was in the performance of his duties as a

Security Guard of Taurus Security Agency and Allied Services, a NORINCO 12 Gauge Shotgun with Serial Number 9600947 with live ammunition valued at P11,900.00 and owned by Napoleon Y. Arnaiz without the said security guard's or the owner's consent, to the latter's damage in the aforementioned amount.[5]

Upon motion by the Public Prosecutor, Criminal Cases Nos. 97-13707 and 97-13708 cases, which were raffled to Branch 74, were ordered consolidated with Criminal Case No. 97-13706 before Branch 71 of the same court.[6] On 16 April 1999, the cases were transferred to Branch 73, the latter being the branch designated to try heinous crimes.[7]

When arraigned on 3 June 1999, appellant, with the assistance of counsel de oficio, pleaded not guilty to the crimes charged.[8] On 27 July 1999, upon agreement by the parties, the pre-trial of the cases was terminated. Thereafter, the cases were jointly tried.[9]

The People's evidence are as follows:

The deceased victim, Chito B. Arizala, was a security guard of the Taurus Security Agency and Allied Services designated as officer-in-charge of the security detachment, assigned to guard the premises of the Sanchez Estate at Manalite II, Brgy. Sta. Cruz, Antipolo City, then a municipality of Rizal. Among the security guards under him was Nonilio Marfil, Jr. (TSN, Oct. 19, 1999, p. 8).

Benjamin Aliño, friend of the victim, testified that at around 6:00 p.m. of January 27, 1997, he met the victim Chito Arizala at the latter's place of work, Sanchez Estate, Manalite II, Brgy. Sta. Cruz, Antipolo City to collect his P150.00 debt (TSN, Jan. 16, 2001, pp. 4-5). After Aliño was paid and when he was about to leave, a bald man (appellant) arrived and had an argument with Arizala regarding the entry of construction materials being brought in by the squatters to the Sanchez Estate which Arizala opposed (TSN, *ibid.*, pp. 6, 15-16). Without any warning, appellant punched Arizala (TSN, *Id.*, p. 8). When Arizala fell to the ground, his shotgun slid from his shoulder and likewise fell down on the ground. Appellant then immediately grabbed and cocked the shotgun (TSN, *Id.*, pp. 8, 16-17). Thus, Aliño shouted, "Chito, takbo na!" Arizala ran towards the direction of the security guards' barracks, while Aliño proceeded to the direction of his home at Kamandag, Mayamot, Antipolo City. Appellant could not fire the shotgun since there was a number of people in the directions to which Arizala and Aliño ran. The following day, Aliño went to Masbate to buy fish. On February 13, 1997, when Aliño went back home, he learned that Arizala had been killed (TSN, *Id.*, p. 11). When asked to identify appellant in court, Aliño stated that appellant was not in the court room. He, thus, identified appellant through the latter's picture (TSN, *Id.*, pp. 12-14).

Nonilio Marfil testified that on January 27, 1997, he was employed as a security guard by Napoleon Arnaiz's Taurus Security Agency and was assigned to guard the construction materials at Sanchez Estate, Upper Manalite II, Brgy. Sta. Cruz, Antipolo City, along with other guards whom he identified as Yap, Velasco, Garcia, Abellar, and the victim Chito Arizala (TSN, Oct. 19, 1999, p. 8).

Around 6:15 p.m. of said date, while Marfil was waiting for his reliever at their barracks, Arizala arrived and asked for Marfil's shotgun because the one assigned to him was grabbed and taken away by appellant (TSN, *Ibid.*, p. 9). Since the victim was both his superior and Officer-in-Charge, Marfil obliged (TSN, *Id.*, p. 10). Arizala then instructed him and the other security guards to follow him. Thereafter, Arizala went ahead carrying Marfil's service shotgun.

When Arizala reached the corner, Marfil, who was following him, suddenly heard a gunshot and saw Arizala slowly falling to the ground. Then, he heard two or more shots and saw Arizala fall supine on the ground. When he was about to approach Arizala to get the shotgun and to help the latter, he heard another shot. So, he moved back for about ten (10) meters. Immediately thereafter, he saw appellant emerge from behind a concrete wall and take the shotgun that was lying on top of the chest of the fallen victim (TSN, *Id.*, pp. 12-13). Fearing that he would be shot next, Marfil ran back to their barracks and asked his fellow security guards to look after

Arizala's body. After which, he proceeded to the place of the victim's family to inform them of the incident (TSN, Id., p. 13).

When Marfil, with Arizala's wife, went back to the crime scene, the people were already milling around the area and, thereafter, the police arrived. Pictures of the victim and the crime scene were taken (Exhibits "I" to "L") and an investigation was conducted (TSN, Id., pp. 14-15). Marfil positively identified appellant as well as the subject pictures taken from the crime scene.

Roque D. Ogrimen, testified that around 6:20 p.m. of January 27, 1997, he was inside his house located at Upper Manalite II, Brgy. Sta. Cruz, Antipolo City. However, when he heard three (3) gunshots, he went out to investigate. He saw his water drum hit, causing its contents to leak through the three holes, and his window pane was broken. Ogrimen likewise saw appellant from a distance of about twenty-five (25) meters and witnessed what the latter did to Arizala, because his view was unblocked (TSN, July 29, 1999, p. 21) and the crime scene was well lighted (TSN, Ibid., pp. 21-22). When he first saw Arizala, the latter was already lying supine on the ground. Then Ogrimen saw appellant, who was holding a handgun. Appellant approached Arizala, belted the handgun, took the shotgun that was then lying on top of Arizala's body, cocked said shotgun, then stepped backwards, and fired two (2) shots at the fallen Arizala (TSN, Id., pp. 7-8, 14). After firing the two (2) shots, appellant walked away, holding the shotgun he took from and used to shoot Arizala (TSN, Id., pp. 9, 27-28).

Thereafter, Ogrimen went to the police station to report the incident. Thus, SPO1 Reynaldo Ancloste responded to Ogrimen's call and supervised the picture-taking of the crime scene. Ogrimen identified the photographs of the drum riddled with holes and his broken glass window (Exhibits "A" and "B"). SPO1 Ancloste was also shown in the photographs recovering bullets from the drum.

Ogrimen explained that there is no mention of appellant shooting the victim with a shotgun in his Affidavit dated January 27, 1997 (Exhibit "I"), because this contains only his answers to the questions of the investigating officer at the time he executed the subject affidavit (TSN, July 29, 1999, p. 15).

Salvador Tejada, an employee of Taurus Security Agency and Allied Services, testified that victim Chito Arizala and Nonilio Marfil, Jr. were, on January 27, 1997, their employees as security guards. At the time of the incident, Arizala was the Officer-in-Charge of the Sanchez Realty Estate located at Manalite II, Sta. Cruz, Antipolo City, where Marfil was also assigned. As such, Arizala and Marfil were issued service firearms pursuant to Mission Order Nos. 96080012 and 96080013, both dated August 12, 1996, respectively (Exhibits "C" and "D"; TSN, July 29, 1999, p. 46). The two (2) firearms issued were with Serial No. 9600942 (to Arizala [TSN, Ibid., 49]) and No. 9600947 (to Marfil [TSN, Ibid., p. 46]), both with 5 ammunition (Exhibits "E" and "F"), and both valued at P11,900.00 each (Exhibits "C" and "H" [TSN, Ibid., p. 50]).

The subject firearms were both Norinco Caliber Shotgun 12 gauge, covered by temporary license issued on August 15, 1996 and September 6, 1996, respectively, that remained valid and in force until the issuance of the regular computerized licenses, namely, Firearm License Nos. RL-M76C1610878 and RL-M76C1618080 on April 28, 1997 (TSN, Jan. 25, 2000, pp. 7-8).

The fact of the loss of the two subject firearms was reported and, accordingly, the Firearms and Explosives Division had declared them lost per Official Receipt 1726642 dated September 7, 1999, covering the payment of an administrative fine.

SPO1 Reynaldo Ancloste conducted the on-the-spot investigation of the shooting of Arizala on January 27, 1997 at Upper Manalite II, Sta. Cruz, Antipolo City.

From the crime scene, he was able to recover two (2) pieces of spent shotgun shells and three (3) bullets (TSN, Nov. 14, 2000), for which he requested the "PCCL and Ballistic Command" for ballistic examinations (TSN, Ibid., p. 6). He personally delivered the request letter to the Criminal Investigation Division at EDSA

Kamuning, Quezon City (TSN, Nov. 14, 2000, p. 8; Exh. "X"). He identified the spent shells he turned over to the said office through the initial "A" that he wrote thereon.

SPO1 Anclothe supervised the pictures taken at the scene of the crime (TSN, Nov. 14, 2000, pp. 15-17; Exhibits "D", "I", "K", "L"). When he arrived at the crime scene, the victim was already lying dead on the ground (TSN, Nov. 14, 2000, p. 21).

P/Sr. Insp. Abraham Pelotin, Firearms Examiner of the PNP Crime Laboratory, Northern Field Office, testified that between February 3 and 19, 1997, he conducted a ballistic examination on some cartridges of a 12-gauge shotgun and three deformed bullets/pellets which were involved in the shooting of Arizala. He conducted a test firing and compared the specimen, subjecting them to physical and microscopic examination. His testing/examination was made upon the request by the Criminal Investigation Office (Exhibit "N"; TSN, Nov. 17, 1999, pp. 4-6, 11-12).

P/Sr. Insp. Pelotin identified his Report FAIB-009097 (Exhibit "M") and declared that the pellet he examined measured 3.3 millimeters, which, based on the size and weight, appears to have come only from a 12-gauge shotgun. Pelotin admitted that although the pellet may be similar to that of a 9-gauge shotgun, however he clarified that no striation on any two bullets are alike (TSN, Ibid., pp. 6-12).

SPO2 Wilfred Tagola of the Firearm and Explosives Division, Camp Crame, Quezon City, testified on the authenticity of the Certification dated October 18, 1999 duly issued by his office (Exhibit "D") showing that two (2) Norinco Shotguns, 12-gauge with Serial Number 9600942 and Serial Number 9600947 at the time of Arizala's shooting on January 27, 1997, were duly licensed and registered in the Firearms and Explosives Division, Camp Crame, Quezon City to Taurus Security and Allied Services (Exhibits "O" and "R") (TSN, March 28, 2000, pp. 6-7).

SPO2 Tagola likewise testified on the authenticity of the Certification dated June 1, 2000, stating that appellant Jose David Lara of Upper Manalite II, Brgy. Sta. Cruz, Antipolo City is not a licensed/registered firearm holder of any kind or caliber (Exhibit "W").

Dr. Floresto Arizala, Jr., a medico-legal officer, testified that he conducted an autopsy on the body of the victim. His finding that the victim sustained "gunshot wounds as well as shotgun wounds" was contained in his Medico-Legal Report No. 97-177 (Exhibit "S"). He likewise illustrated in two anatomical sketches the injuries sustained by the victim (Exhibits "T" and "U"; TSN, March 29, 2000, pp. 7-8). After his autopsy of the victim, he issued a Certificate of Post Mortem Examination (Exhibit "V").

Dr. Arizala found gunshot wound No. 1, which measures 3 x 7 cm. fatal, because the bullet entered the victim's brain cavity through his forehead (TSN, March 29, 2000, p. 11). Barely on top of gunshot wound No. 1, is gunshot wound No. 2, a gunshot graze wound measuring 1.5 cm. (TSN, Ibid., p. 9).

Shotgun wound No. 1, with entrance wound measuring 3.5 x 2.5 cm. is likewise fatal as it was inflicted at the deceased's abdominal area, injuring his intestine, spine and colon and with seven (7) exit wounds at the back of the victim's body where two (2) metallic fragments were recovered (TSN, Id., pp. 10-12).

The wounds sustained by the victim were caused by a handgun and a shotgun (TSN, Id., pp. 17-24-25). From the tattooing seen on the victim's body, Dr. Arizala concluded that the muzzle of the shotgun was probably a yard away from the victim when it was fired (TSN, Id., pp. 14-15, 25). It is possible that the assailant was standing while the victim was lying down, when shotgun wound No. 1 was inflicted (TSN, Id., p. 15). It is likewise possible that when shotgun wound No. 2, was inflicted, the assailant fired at his level while the victim was standing (TSN, id., p. 16). Shotgun wound No. 2, with entrance wound measuring 3.5 x 2.5 cm. (TSN, Id., p. 10) and with exit wounds at the back left side of the victim (TSN, p. 13), was also fatal since this was inflicted at the part of the body where vital organs are located (TSN, Id., p. 14).

Maria Arizala, wife of the victim, testified that they have a ten-year old child and her husband was earning

P4,500.00 a month for his work as a security guard (Exhibit "L").

Delia Arizala-Par, sister of victim, testified that she shouldered the funeral expenses of her brother and presented various expense receipts relative thereto (Exhibits "AA" to "GG") amounting to the sum of P170,805.25. She also presented the victim's birth certificate Exhibit "II").[10]

While the prosecution was in the process of adducing its evidence, appellant escaped from detention.[11] After the prosecution rested its case, the lower court granted the prosecution's motion to declare appellant to have waived his right to present evidence and to consider him a fugitive from justice.[12]

In a Decision dated 3 March 2003,[13] the trial court found appellant guilty of the charges, the dispositive portion of which reads:

WHEREFORE, premises considered, accused JOSE LARA Y DAVID is hereby found guilty beyond reasonable doubt in Criminal Case Nos. 97-13706, 97-13707 and 97-13708. Said accused is hereby sentenced to suffer the following penalties:

For Criminal Case No. 97-13706

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Death

For Criminal Case No. 97-13707

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Prision Mayor minimum period pursuant to the provision of P.D. 1866 as amended by RA 8292 plus a fine of P30,000.

For Criminal Case No. 97-13708

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imprisonment for 4 years 2 months of Prision Correccional as minimum to 10 years of Prision Mayor as maximum.

Further, the accused is hereby order (sic) to pay to the heirs of Chito Arizala P170,805.25 as actual damages, P200,000 as moral damages, P50,000 as death indemnity, P648,000 for the victim's loss of earning capacity and P100,000 as exemplary damages. And to indemnify Taurus Security Agency and Allied Services in the amount of P24,800.[14]

Considering that the death penalty was imposed on appellant, the records were forwarded to the Supreme Court for automatic review. There being an automatic review, we denied appellee's motion to dismiss dated 29 March 2005 which claimed that appellant lost his right to appeal in view of his escape from the Rizal Provincial Jail. Conformably with Our ruling in *People v. Mateo*,[15] the case was remanded to the Court of Appeals for appropriate action and disposition.[16]

On 22 December 2005, the Court of Appeals affirmed appellant's conviction of Robbery with Homicide and Robbery, but acquitted him for Qualified Illegal Possession of Firearm. It disposed of the case as follows:

UPON THE VIEW WE TAKE OF THIS CASE, THUS, the appealed Decision dated March 3, 2003 of the Regional Trial Court of Antipolo City, Branch 73, in *Crim. Cases Nos. 97-13706, 97-13707 and 97-13708*, convicting the accused-appellant Jose D. Lara (alias "Jose Kalbo") of the crimes of robbery with homicide, qualified illegal possession of firearms and robbery is hereby MODIFIED, as follows:

- In Crim. Case No. 97-13706 (for robbery with homicide), the accused-appellant is sentenced to suffer the supreme penalty of death.
- In Crim. Case No. 97-13707 (for qualified illegal possession of firearms), the sentence imposed on the accused-appellant is nullified and set aside and the accused-appellant acquitted of the indictment against him.
- In Crim. Case No. 97-13708 (for robbery), the accused-appellant is sentenced to an indeterminate prison term of four (4) years and two (2) months of prision correccional, as minimum, to eight (8) years and twenty (20) days of prision mayor, as maximum.

The accused-appellant is likewise ordered to pay the following amounts to the heirs of the victim: (a) P75,000.00 as civil indemnity; (b) P666,000.00 as indemnity for the lost earnings of the victim; (c) P50,000.00 as moral damages; (d) P25,000.00 as exemplary damages; and (e) P170,805.25 as actual damages. He is further ordered to indemnify Taurus Security Agency and Allied Services in the amount of P23,800.00. Let Criminal Case No. 97-13706 and Criminal Case No. 97-13708, along with the entire records, be certified and elevated for review to the Supreme Court pursuant to A.M. No. 00-5-03 SC, effective October 15, 2004.[17]

On account of appellant's acquittal in Criminal Case No. 97-13707, a partial entry of judgment has been made in said case.[18]

With the elevation of the records to the Supreme Court, the parties were required to submit supplemental briefs within thirty (30) days from notice.[19] The parties opted not to file supplemental brief on the ground they have fully argued their positions in their respective briefs.[20]

Appellant makes a lone assignment of error:

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED DESPITE THE EXISTENCE OF REASONABLE DOUBT IN HIS FAVOR.

Appellant argues the trial court erred in relying on the testimonies of prosecution witnesses Roque Ogrimen, Nonilio Marfil and Benjamin Aliño there being glaring inconsistencies therein. The alleged inconsistencies are: First, Ogrimen testified on direct examination that he saw appellant pick up the shotgun from the victim's chest when the latter fell to the ground, but on cross-examination, he admitted he never mentioned such fact in his affidavit dated 27 January 1997; Second, Marfil's testimony on direct examination gave the impression that appellant shot the victim, but on cross-examination, he admitted he did not actually see appellant shoot the victim; Third, on direct examination, Aliño alleged that appellant and the victim had an argument before the shooting, but when cross-examined, he said he ran away from the scene without seeing the appellant actually shoot the victim. These contradictory statements and omission of important details, he claims, erode the credence of their testimonies.

Roque Ogrimen's failure to mention in his affidavit that he saw appellant pick up the shotgun from the victim's chest when the latter fell to the ground is not sufficient to discredit his testimony. We agree with the Court of Appeals that such omission relates to a minor and insignificant detail that will not substantially contradict Ogrimen's testimony in court that he saw appellant shoot the victim twice with the latter's shotgun.[21] Oftentimes, affidavits taken ex parte are considered inaccurate as they are prepared by other persons who use their own language in writing the affiant's statements. Omissions and misunderstandings by the writer are not infrequent, particularly under circumstances of haste or impatience. Thus, more often than not, affidavits do not reflect precisely what the declarant wants to impart.[22] Omissions in the statements of the affiant in his affidavit and those made by him on the witness stand do not necessarily discredit him.[23] In fact, Ogrimen satisfactorily explained in court the omission by saying he only answered the questions asked by the policemen.[24]

Despite said omission, Ogrimen was categorical in his affidavit that it was appellant who took the shotgun from the victim who was already lying supine on the ground. His declarations in his Affidavit read:

T:

Sino naman ang bumaril at nakapatay dito sa sinasabing si Arizala kung iyong nakikilala?

x x x x

T:

Sa ikaliliwanag ng pagsisiyasat na ito maari bang isalaysay mo sa akin ang buong pangyayari sa iyong nasaksihang barilan?

S:

Opo, ng mga oras na iyon ay nasa loob ako ng aming bahay at nanonood ng TV ng makarining akong tatlong (3) sunod-sunod na putok ng baril, dahil parang malapit sa bahay naming ang aking mga narinig na putok ay aking itinago ang aking mga anak, pati na rin ang misis ko ay aking pinatago sa loob ng kuwarto, pagkatapos ay nakarinig uli ako ng isa (1) putok, tumakbo ako palabas at duon ako nagdaan sa kusina naming, pagkalabas ko ay aking nakita si JOSE LARA na may hawak pang baril na eskwala at lumapit sya kay ARIZALA na nakabulagta sa lupa at kinuha ang baril na shotgun na hawak pa ni Arizala x x x.[25]

As regards the alleged inconsistency of Nonilio Marfil in his testimony, we find the same does not exist. In his direct examination, Marfil never testified that he saw appellant shoot the victim. He said that when the victim reached the corner of a concrete wall, he heard a gunshot and saw the victim slowly falling to the ground. He then heard two more gunshots and saw the victim fall supine on the ground. When he was about to approach the victim to get his shotgun so he can help the latter, he heard another gunshot causing him to move 10 meters back. It was then that he saw appellant emerge behind the concrete wall and take the shotgun that was on top of the victim's chest. Fearing that he would be shot next, he retreated to their barracks. His testimony is as follows:

A:

When we followed him, while we were walking, and when Chito reached the corner of the wall, I suddenly heard gunshot and I saw Chito Arizala falling down slowly.

Q:

When you heard the shot and you saw Chito slowly falling downwards, what happened next, if there was any?

A:

I heard another two shots before his body laid sprawled on the ground.

Q:

When the body of Chito Arizala fell on the ground what else happened, if any?

A:

I was intending to approach him to get the shotgun and also to help him but I heard another shot.

Q:

After you heard another shot, what else happened if any?

A:

I stepped back.

Q:

After you have stepped back, what else happened, if any?

A:

After I have stepped back ten meters, I stopped.

Q:

Why did you stop?

A:

I saw Jose Lara come out behind the wall.

Q:

You said "pader", when you said "pader," what does that mean?

A:

A concrete fence.

Q:

You said you saw Jose Lara appearing from behind the concrete wall, are you referring to the same Jose Lara whom you identified before?

A:

Yes, sir.

Q:

After you saw him appear in the open from behind the concrete wall, what else happened, if any?

A:

I saw him took (sic) the shotgun which was on top of the chest of Chito Arizala.

Q:

What did Jose Lara do after he has taken the shotgun from Chito Arizala?

A:

After that I left, sir, because he might see me and he might also shoot me.

Q:

You said that Jose Lara took that shot gun that was lying on top of the chest of Chito, are you referring to the same shotgun that was covered by your mission order?

A:

Yes, sir.

Q:

You said you left because you were afraid because you might be shot also, what did you do?

A:

I returned to the barracks.[26]

There is likewise no inconsistency in Benjamin Alino's testimony in his direct examination that appellant and the victim had an argument before the shooting, and his admission on cross-examination that he ran away from the crime scene without seeing appellant shoot the victim.

We find the findings of fact of the trial court to be in accord with the evidence on record. When it comes to credibility, the trial court's assessment deserves great weight, and is even conclusive and binding, if not tainted with arbitrariness or oversight of some fact or circumstance of weight and influence. The reason is obvious. Having the full opportunity to observe directly the witnesses' deportment and manner of testifying, the trial court is in a better position than the appellate court to evaluate properly testimonial evidence.[27] In the case at bar, we have no reason to depart from this principle and to apply the exception. The testimonies of Roque Ogrimen and Nonilio Marfil clearly establish the guilt of appellant as the assailant who took two shotguns from the victim. On top of such damning evidence, no evidence was adduced by the defense because appellant escaped detention, thus waiving his right to do so. Flight is a strong indication of guilt when it is done to escape from the authorities or to escape prosecution.[28]

Having established the guilt of appellant, we now determine what crime or crimes he committed. It is clear from the evidence that appellant and the victim had a heated argument. Appellant punched the victim causing the latter to fall to the ground. The victim's service shotgun (Norinco 12-Gauge Shotgun bearing Serial No. 9600942) also fell to the ground which the appellant grabbed and cocked. The victim ran towards the security guards' barracks while appellant, in possession of the shotgun, proceeded towards his home. At the barracks, the victim asked Nonilio Marfil for his (Marfil) service shotgun (Norinco 12-Gauge Shotgun bearing Serial No. 9600947) explaining to the latter that his (victim) shotgun was taken away by the appellant. The victim being his superior and Officer-In-Charge, Marfil obliged and handed over his shotgun to the victim. The victim then instructed Marfil and the other security guards to follow him. With a shotgun on hand, the victim went ahead to retrieve his shotgun. When the victim reached the corner of a concrete wall, a shot rang out and the victim slowly fell to the ground. Two or more shots followed and the victim lay supine on the ground. Appellant emerged from behind the concrete wall holding a handgun. He approached the victim, tucked the handgun in his waistband, and took the shotgun that was on top of the victim's body. Appellant cocked the shotgun, stepped backwards and then fired two shots at the fallen victim. Thereafter, appellant walked away with the (second) shotgun.

Appellant was charged with Robbery with Homicide (Criminal Case No. 97-13706), Qualified Illegal Possession of Firearm (Criminal Case No. 97-13707) and Robbery (Criminal Case No. 97-13708). The trial court found him guilty as charged. The Court of Appeals, however, exonerated him of the charge of Qualified Illegal Possession of Firearm.

We agree with appellant's acquittal of the charge of Qualified Illegal Possession of Firearm. With the effectivity of Republic Act No. 8294[29] on 6 July 1997, the use of an unlicensed firearm in the commission of homicide or murder is no longer treated as a separate offense, but only as a special aggravating circumstance.[30] Thus, where an accused used an unlicensed firearm in committing homicide or murder, he may no longer be charged with what used to be two separate offenses of homicide or murder under the Revised Penal Code and qualified illegal possession of firearms used in homicide or murder under Presidential Decree No. 1866.[31] Although the killing was committed on 27 January 1997, being favorable to appellant who was not shown to be a habitual delinquent, the amendatory law was properly given retroactive application pursuant to Article 22 of the Revised Penal

Code.[32] Thus, insofar as it spared appellant a separate conviction for illegal possession of firearms, Republic Act No. 8294 has to be given retroactive application in Criminal Case No. 97-13707.

We now go to the convictions in Criminal Case No. 97-13706 for Robbery with Homicide, and Criminal Case No. 97-13708 for Robbery, which the Court of Appeals upheld.

In the offense of robbery with homicide, a crime primarily classified as one against property and not against persons, the prosecution has to firmly establish the following elements: (a) the taking of personal property with the use of violence or intimidation against the person; (b) the property thus taken belongs to another; (c) the taking is characterized by intent to gain or *animus lucrandi*; and (d) on the occasion of the robbery or by reason thereof, the crime of homicide, which is therein used in a generic sense, was committed.[33] The accused must be shown to have the principal purpose of committing robbery, the homicide being committed either by reason of or on occasion of the robbery.[34] The intent to rob must precede the taking of human life. So long as the intention of the felons was to rob, the killing may occur before, during or after the robbery.[35] The original design must have been robbery, and the homicide, even if it precedes or is subsequent to the robbery, must have a direct relation to, or must be perpetrated with a view to consummate the robbery. The taking of the property should not be merely an afterthought which arose subsequently to the killing.[36]

We disagree with the Court of Appeals that appellant committed the crime of robbery with homicide in Criminal Case No. 97-13706. There is nothing in the records that would show that the principal purpose of appellant was to rob the victim of his shotgun (Serial No. 9600942). It must be emphasized that when the victim and appellant met and had a heated argument, the absence of the intent to rob on the part of the appellant was apparent. Appellant was not trying to rob the victim. Appellant's act of taking the shotgun was not for the purpose of robbing the victim, but to protect himself from the victim. No one would in one's right mind just leave a firearm lying around after being in a heated argument with another person. Having failed to establish that appellant's original criminal design was robbery, appellant could only be convicted of the separate crimes of either murder or homicide, as the case may be, and theft.[37]

Without a doubt, the intention of appellant was to kill the victim. Said intention was very clear when he treacherously waited for the victim at the corner of the concrete fence. The number of shots appellant fired at the victim and the way he snuffed out the victim's life by firing two shots from the shotgun at very close range further support this conclusion.

We now go to the nature of the crime committed by appellant. Though appellant was charged with robbery with homicide in Criminal Case No. 97-13706, we find him guilty of murder under Article 248 of the Revised Penal Code and theft under Article 309 of the same Code. It is axiomatic that the nature and character of the crime charged are determined not by the designation of the specific crime, but by the facts alleged in the information.[38] We likewise find that treachery attended the killing. There is treachery in a sudden and unexpected attack which renders the victim unable to defend himself by reason of the suddenness and severity of the attack.[39] In the case at bar, the victim was ambushed when he reached the corner of a concrete fence where appellant was waiting. The victim was not even able to fire a shot because the attack was so sudden and unexpected. Treachery is also evident from the fact that the victim was even shot twice when he was already lying supine on the ground. Since treachery was properly alleged in the information, same can be used to qualify the killing to murder.

The Information in Criminal Case no. 97-13706 likewise alleged the qualifying circumstance of evident premeditation. Evident premeditation may not be appreciated where there is no proof as to how and when the plan to kill was hatched or the time that elapsed before it was carried out.[40] In the case at bar, the prosecution failed

to establish that evident premeditation attended the killing.

As regards the special aggravating circumstance of use of an unlicensed firearm in a murder or homicide, same cannot also be considered. Inasmuch as the use of an unlicensed firearm is now considered as a special aggravating circumstance which would not merit the imposition of the supreme penalty of death, the same must be specially alleged in the Information.[41] The Information in Criminal Case No. 97-13706 failed to allege this circumstance.

As to Criminal Case No. 97-13708, appellant should only be liable for theft. The fact that appellant took the shotgun (Serial No. 9600947) from the victim when he was already lying on the ground does not necessarily mean that he committed robbery. It must be remembered that the taking of the second shotgun was intimately connected with the killing of the victim. When appellant waited for the victim to come his way, his intention was evidently to kill and not to rob inasmuch as appellant was not intending to rob the victim of any of his personal belongings, more particularly, a second shotgun. The taking of the second shotgun was clearly an afterthought that arose after he killed the victim.

We now go to the proper imposition of the penalties. Appellant is guilty of Murder and two counts of theft.

The penalty for murder is reclusion perpetua to death. Article 63 of the Revised Penal Code states that when the law prescribes a penalty consisting of two indivisible penalties and the crime is neither attended by mitigating nor aggravating circumstances, the lesser penalty shall be imposed. Thus, for the murder of Chito Arizala, there being no other mitigating or aggravating circumstance attending the same, the penalty imposed on appellant is reduced from death to reclusion perpetua.

The penalty for theft where the value of the stolen article is P11,900.00 is prision correccional in its medium and maximum periods. Since appellant escaped from confinement, the Indeterminate Sentence Law will not apply.[42] Thus, appellant is sentenced to four years, nine months and ten days of prision correccional for each count of theft.

As regards the award of damages, the same must be modified. The P75,000.00 awarded by the Court of Appeals as civil indemnity must be reduced to P50,000.00. The amount of P75,000.00 as civil indemnity is awarded only if the crime is qualified by circumstances which warrant the imposition of the death penalty.[43]

With respect to the award of moral damages, the amount of P50,000.00 was correctly awarded pursuant to Articles 2217 and 2219 paragraph 1 of the Civil Code. In the case at bar, the victim's wife testified on this matter.[44]

We award the amount of P665,999.99 as indemnity for lost earnings of the victim. The prosecution was able to prove that Chito Arizala, at the time of his death, was 43 years old with a monthly income of P4,500.00.[45] The indemnity for the loss of the victim's earning capacity[46] is computed as follows:

Net earning capacity

=

Life expectancy[47] x (Gross annual income - living expenses[48])

Net earning capacity

=

$\frac{2}{3} (80-43) \times (P54,000 - P27,000)$

=

24,666 x P27,000

=

P665,999.999[49]

The award of P170,805.25 as actual damages is also affirmed. Said amount representing hospital, funeral and burial expenses, is supported by documentary evidence.[50]

As for exemplary damages, the award of P25,000.00 is in order in light of the presence of the qualifying circumstance of treachery.

Lastly, the award of the amount of P23,800.00 as indemnity to Taurus Security Agency and Allied Services for the two stolen shotguns is proper.

WHEREFORE, all the foregoing considered, the decision of the Court of Appeals in CA-G.R. CR-H.C. No. 01140 is hereby MODIFIED as follows:

- In Criminal Case No. 97-13706, appellant is found GUILTY beyond reasonable doubt of the crime of Murder and is sentenced to suffer the penalty of reclusion perpetua. He is likewise found GUILTY beyond reasonable doubt of the crime of Theft and is sentenced to suffer the penalty of Four (4) years, Nine (9) months and Ten (10) days of prision correccional.

- In Criminal Case No. 97-13708, appellant is found GUILTY of the crime of Theft. He is sentenced to suffer the penalty of Four (4) years, Nine (9) months and Ten (10) days of prision correccional.

Appellant is ordered to pay the following amounts to the heirs of the victim: (a) P50,000.00 as civil indemnity; (b) P665,999.99 as indemnity for the lost earnings of the victim; (c) P50,000.00 as moral damages; (d) P170,805.25 as actual damages; and (e) P25,000.00 as exemplary damages. He is further ordered to indemnify Taurus Security Agency and Allied Services in the amount P23,800.00.

SO ORDERED.

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

[1] Penned by Associate Justice Renato C. Dacudao with Associate Justices Lucas P. Bersamin and Celia C. Librea-Leagogo, concurring; rollo, pp. 191-212.

[2] Records, pp. 327-334.

[3]Id. at 1-2.

[4]Id. at 9.

[5]Id. at 16.

[6]Id. at 26.

[7]Id. at 148.

[8]Id. at 159.

- [9] Id. at 167.
- [10] CA rollo, pp. 93-103.
- [11] Id. at 244.
- [12] Id. at 297.
- [13] Promulgated in absentia.
- [14] Records, p. 334.
- [15] G.R. Nos. 147678-87, 7 July 2004, 433 SCRA 640.
- [16] Rollo, p. 188.
- [17] Id. at 211-212.
- [18] Id. at 213.
- [19] Id. at 25.
- [20] Id. at 26-27, 30-32.
- [21] TSN, 29 July 1999, pp. 8-9.
- [22] People v. Milliam, 381 Phil. 163, 173 (2000); People v. Albarido, 420 Phil. 235, 244 (2001).
- [23] People v. Ablog, 368 Phil. 526, 533 (1999).
- [24] TSN, 29 July 1999, pp. 14-15.
- [25] Records, pp. 5-6.
- [26] TSN, 19 October 1999, pp. 11-13.
- [27] People v. Escultor, G.R. Nos. 149366-67, 27 May 2004, 429 SCRA 651, 661.
- [28] People v. Saragina, 388 Phil. 1, 24-25 (2000).
- [29] An Act Amending The Provisions Of Presidential Decree No. 1866, As Amended, Entitled "Codifying The Laws On Illegal/Unlawful Possession, Manufacture, Dealing In, Acquisition Or Disposition Of Firearms, Ammunition Or Explosives Or Instruments Used In The Manufacture Of Firearms, Ammunition Or Explosives, And Imposing Stiffer Penalties For Certain Violations Thereof, And For Relevant Purposes."
- [30] People v. Arondain, 418 Phil. 354, 370 (2001).
- [31] People v. Tadeo, 437 Phil. 566, 578 (2002).
- [32] People v. Ringor, Jr., 378 Phil. 78, 93 (1999).
- [33] People v. Del Rosario, 411 Phil. 676, 685 (2001).
- [34] People v. Reyes, G.R. No. 153119, 13 April 2004, 427 SCRA 28, 42.
- [35] People v. Escote, Jr., 448 Phil. 749, 783-784 (2003).
- [36] People v. Consejero, G.R. No. 118334, 20 February 2001, 352 SCRA 276, 291.
- [37] People v. Ponciano, 5 December 1999.

[38] People v. Salvador, 11 August 1997.

[39] People v. Tolentino, G.R. No. L-59097, 20 September 1988, 165 SCRA 490, 496.

[40] People v. Agudez, G.R. Nos. 138386-87, 20 May 2004, 428 SCRA 692, 709.

[41] People v. Narciso, 440 Phil. 964, 978 (2002).

[42] Sec. 2. This Act shall not apply to persons convicted of offenses punished with death penalty or life-imprisonment to those convicted of treason, conspiracy or proposal to commit treason; to those convicted of misprision of treason, rebellion, sedition or espionage; to those convicted of piracy; to those who are habitual delinquents; to those who shall have escaped from confinement or evaded sentence; x x x.

[43] People v. Barcena, G.R. No. 168737, 16 February 2006, 482 SCRA 543, 561.

[44] TSN, 20 February 2001, pp. 6-8.

[45] Exhibits Z and II, Records, pp. 372 and 381.

[46] People v. Dinamling, G.R. No. 134605, 12 March 2002, 379 SCRA 107, 124.

[47] Life expectancy is based on the American Expectancy Table of Mortality and is computed using the formula, $\frac{2}{3} \times (80 - \text{age of the deceased at the time of death})$.

[48] In the absence of proof, living expenses is estimated to be 50% of the gross annual income.

[49] The Court of Appeals rounded the amount to P666,000.00

[50] Exhs. AA to HH, Records, pp. 373-380; TSN, 20 February 2001, pp. 12-18.

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