RODEL CRISOSTOMO, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

G.R. No. 171526. September 01, 2010

Ponente: DEL CASTILLO, J.

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DEL CASTILLO, J.:

For review under Rule 45 of the Rules of Court is the Decision[1] dated September 22, 2005 of the Court of Appeals in CA-G.R. CR.-H.C. No. 01192, affirming with modification the Decision[2] rendered by the Regional Trial Court of Malolos, Bulacan, Branch 12, in Criminal Case No. 1632-M-2001, finding petitioner Rodel Crisostomo guilty beyond reasonable doubt of the complex crime of Robbery with Homicide.

Factual Antecedents

The Information filed against petitioner and his two companions designated only as John Doe and Peter Doe contained the following accusatory allegations:

> That on or about the 12[th] day of February, 2001, in the municipality of San Miguel, province of Bulacan, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and helping one another, armed with a gun, did then and there willfully, unlawfully and feloniously, with intent [to] gain and by means of force, violence and intimidation upon person, enter the gasoline station owned by Jose Buencamino and once inside, take, rob and carry away with them P40,000.00, belonging to the said Jose Buencamino, to the damage and prejudice of the latter in the amount of P40,000.00, and on the occasion of the commission of the said robbery or by reason thereof, the herein accused, in furtherance of their conspiracy, did then and there willfully, unlawfully and feloniously, attack, assault and shoot Janet Ramos, cashier of said gasoline station, thereby inflicting on her serious physical injuries which directly caused her death.
>
> Contrary to law.[3]

During his arraignment, petitioner entered a plea of not guilty.[4] Thereafter, trial ensued.

Version of the Prosecution

On February 12, 2001, at around 12:20 in the afternoon, Rodelio Pangilinan (Rodelio) was working at a gasoline station owned by Jose Buencamino (Jose) at Buliran, San Miguel, Bulacan. He was by the gasoline tank which was two or three arms length from the cashier's office when three armed men on board a motorcycle arrived. Two of the men immediately went to the cashier while the driver stayed on the motorcycle. Inside the office, one of the men pulled out a fan knife while the other, armed with a gun, fired a shot at Janet Ramos (Janet), the cashier. They forcibly took the money in the cash register and the man with the gun fired a second shot that fatally hit Janet in the right side of her head. The two armed men returned to their companion waiting by the motorcycle and together sped away from the scene of the crime.

Rodelio gave a description of the driver of the motorcycle but not of the two armed men who entered the cashier's office since they had their backs turned to him. The National Bureau of Investigation (NBI) prepared a

cartographic sketch based on the information provided by Rodelio. Jose, the owner of the gas station, stated that the stolen money was worth P40,000.00. Receipts in the amount of P14,500.00 were presented as funeral expenses.

On February 23, 2001, the petitioner was detained after being implicated in a robbery that occurred in San Miguel, Bulacan. During his detention, Rodelio and another gasoline boy arrived and identified him in a police lineup as one of the three robbers who killed Janet.

Version of the Defense

Petitioner denied committing the crime for which he was charged. He maintained that the face of the man depicted in the cartographic sketch by the NBI was completely different from his appearance in the police lineup in which Rodelio pointed at him as one of the perpetrators. He argued that the only reason why Rodelio pointed to him in the police lineup was because he was the only one in handcuffs.

Ruling of the Regional Trial Court

The trial court rendered its Decision convicting petitioner of robbery with homicide. The dispositive portion reads:

> WHEREFORE, finding herein accused RODEL CRISOSTOMO y DE LEON guilty as principal beyond reasonable doubt of the crime of robbery with homicide as charged, there being no circumstances, aggravating or mitigating, found attendant in the commission thereof, he is hereby sentenced to suffer the penalty of reclusion perpetua, to indemnify the heirs of victim Janet Ramos in the amount of P75,000.00, the owner or operator, Jose Buencamino, Jr., of the gasoline station that was robbed, in the amount of P40,000.00 plus P14,500.00 as funeral expenses (Exh. "H") defrayed by said owner for its cashier Janet Ramos, as actual damages, and to pay the costs of the proceedings.
>
> In the service of his sentence said accused, a detention prisoner, shall be credited with the full time during which he had undergone preventive imprisonment, pursuant to Art. 29 of the Revised Penal Code.
>
> SO ORDERED.[5]

Not satisfied, petitioner filed a Motion for Reconsideration and Inhibition,[6] which was denied by the trial court in an Order[7] dated January 13, 2003.

Ruling of the Court of Appeals

Upon review of the case pursuant to this Court's ruling in People v. Mateo,[8] the CA affirmed with modification the conviction of petitioner. The dispositive portion of the CA's Decision reads:

> In VIEW OF ALL THE FOREGOING, the appealed decision is AFFIRMED, with a modification that the awarded civil indemnity is reduced from P75,000.00 to P50,000,00. Costs de oficio.
>
> SO ORDERED.[9]

Issue

Before us, the petitioner assails the Decision of the CA and raises the following issue:

> WHETHER X X X THE X X X COURT OF APPEALS COMMITTED ERROR IN NOT HOLDING THAT THE TRIAL COURT GRIEVOUSLY ERRED IN THE APRPECIATION OF FACTS AND APPLYING THE LAW IN CONVICTING ACCUSED OF ROBBERY WITH HOMICIDE.[10]

Our Ruling

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The petition is unmeritorious.

The trial court properly denied
the motion for inhibition.

Petitioner claims that his motion for inhibition should have been granted since his counsel filed a case against the wife of the trial judge involving a land dispute. Petitioner alleges that the case rendered the trial judge partial, biased and, thus, incapable of rendering a just and wise decision.

We are not convinced. It must be stressed that as a rule, "a motion to inhibit must be denied if filed after x x x the Court had already given its opinion on the merits of the case, the rationale being that `a litigant cannot be permitted to speculate upon the action of the court x x x (only to) raise an objection of this sort after a decision had been rendered'."[11] Here, petitioner's Motion for Reconsideration and Inhibition was filed on November 29, 2002[12] after the trial court rendered its Decision on November 14, 2002.[13] Accordingly, the trial judge did not commit any impropriety in denying the motion to inhibit as it came after the case had been decided on the merits.

Further, in a motion for inhibition, "[t]he movant must x x x prove the ground of bias and prejudice by clear and convincing evidence to disqualify a judge from participating in a particular trial."[14] "Bare allegations of partiality x x x [is not sufficient] in the absence of clear and convincing evidence to overcome the presumption that the judge will undertake his noble role to dispense justice according to law and evidence and without fear or favor."[15] Petitioner's bare allegations in his motion to inhibit are not adequate grounds for the disqualification or inhibition of the trial judge. Thus, credence should not be given to the issue of alleged prejudice and partiality of the trial judge.

Petitioner is guilty of the complex crime
of robbery with homicide.

Robbery with homicide exists "when a homicide is committed either by reason, or on occasion, of the robbery. 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. 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. The intent to rob must precede the taking of human life but the killing may occur before, during or after the robbery."[16]

In this case, the prosecution successfully adduced proof beyond reasonable doubt that the genuine intention of the petitioner and his companions was to rob the gasoline station. Rodelio testified that at around 12:20 in the afternoon of February 12, 2001, the petitioner and his companions arrived on board a motorcycle at the gas station located at Buliran, San Miguel, Bulacan. While the petitioner stayed on the motorcycle, his companions entered the cashier's office. One of them pulled out a fan knife while the other fired his gun at Janet. After divesting the amount of P40,000.00, the man with the gun fired a fatal shot to the head of Janet. The petitioner's companions returned to and boarded their motorcycle, and sped away together.[17]

From the foregoing, it is clear that the overriding intention of the petitioner and his cohorts was to rob the gasoline station. The killing was merely incidental, resulting by reason or on occasion of the robbery.

The petitioner attempts to discredit Rodelio, the eyewitness presented by the prosecution, by asserting that his testimony is in conflict with the statements in his affidavit. In his testimony, Rodelio said that it was one of the men who entered the cashier's office who was holding a gun while in his sworn statement, he alleged that

petitioner had a .45 caliber pistol which was poked at him.

Such an argument fails to impress as discrepancies between sworn statements and testimonies made at the witness stand do not necessarily discredit the witness. "Sworn statements/affidavits are generally subordinated in importance to open court declarations because the former are often executed when the affiant's mental faculties are not in such a state as to afford him a fair opportunity of narrating in full the incident which transpired. Testimonies given during trials are much more exact and elaborate. Thus, testimonial evidence carries more weight than sworn statements/affidavits."[18]

"Further, to the extent that inconsistencies were in fact shown, they appear to [this] Court to relate to details of peripheral significance which do not negate or dissolve the positive identification [by the eyewitness of the petitioner and his co-accused] as the perpetrators of the crime."[19]

That Rodelio had to be subpoenaed five times and be arrested in order to testify for the prosecution do not weaken the case against the petitioner and his cohorts. During cross-examination, Rodelio explained that his failure to respond immediately to the subpoena was because he does not know how to go to court. Thus:

> Q:
>
> Why did you fail to appear before this Honorable Court when you were first summoned to appear before this court?
>
> A:
>
> Because my employer was sick, sir.
>
> COURT:
>
> Q:
>
> Who was that employer?
>
> A:
>
> Ping Buencamino, your Honor.
>
> ATTY. KLIATCHKO:
>
> Q:
>
> Assuming that he is sick why did you not go to this Honorable Court?
>
> A:
>
> I have no companion. I have no idea.

Even assuming that Rodelio was initially reluctant to testify and get involved in the ensuing criminal prosecution against the petitioner and his co-accused, this "is but normal and does not by itself affect [his] credibility."[21]

The petitioner also avers that he was not the person depicted in the cartographic sketch. However, "a cartographic sketch, unlike a photograph, is only intended to give the law enforcers a general idea of the likeness of a suspect and is never expected to exactly resemble his actual facial appearance. Even the description of the suspect given in the cartographic sketch may not be unerringly exact."[22] What is important is the fact that the petitioner was positively identified by Rodelio as the perpetrator of the crime even without a moustache and curly hair.

We are not likewise impressed with petitioner's assertion that the case against him was weakened with the failure

to present Reinerio, the other eyewitness to the commission of the crime and one of the prosecution's proposed witnesses. As a rule, "the prosecution has the exclusive prerogative to determine whom to present as witnesses. [It] need not present each and every witness but only such as may be needed to meet the quantum of proof necessary to establish the guilt of the accused beyond reasonable doubt."[23] Here, the testimony of Reinerio would merely corroborate the statements of Rodelio on the witness stand, which when considered together with the other evidence presented by the prosecution, established beyond reasonable doubt the culpability of the petitioner and his cohorts. Further, there is nothing on record which would show that Rodelio was actuated by ill motive or hate in imputing a serious offense of robbery with homicide against the petitioner.

We are also not impressed with the petitioner's insistence that his identification in the police lineup was highly irregular. There is simply no factual basis to prove that he was the only suspect in the lineup with handcuffs that prompted Rodelio to point to him as the suspect. It is worth stressing that the police investigators are presumed to have performed their duties regularly and in good faith.[24] In the absence of sufficient proof to overturn this presumption, petitioner's positive identification by Rodelio remains free from any stain of wrongdoing.

Besides, not only did Rodelio identify the petitioner in the police lineup, he also positively identified petitioner when he testified in court.

The petitioner's contention that he did not conspire with the other accused in the commission of the crime cannot be given credence. There is no doubt that the petitioner participated actively in the commission of the crime. He was positively identified as the driver of the motorcycle with his two male companions on board. They arrived together at the gasoline station. His cohorts then went inside the office to conduct the robbery while he remained on the motorcycle and waited for his cohorts. After his two companions stole the money and killed the cashier, they sped away from the scene of the crime in each other's company using the same motorcycle.

Against the testimony of the prosecution's eyewitness, the petitioner could only rely on the defense of denial. This defense, however, deserves scant consideration since "denial cannot prevail over the positive testimony of a witness. A mere denial, just like alibi, is a self-serving negative evidence which cannot be accorded greater evidentiary weight than the declaration of credible witnesses who [testified] on affirmative matters."[25]

"The concerted manner [in which the petitioner and his] companions perpetrated the crime showed beyond reasonable doubt the presence of conspiracy. Where conspiracy is established, it matters not who among the accused actually shot and killed the victim. The consistent doctrinal rule is that when a homicide takes place by reason or on the occasion of the robbery, all those who took part shall be guilty of the special complex crime of robbery with homicide whether or not they actually participated in the killing, unless there is proof that they had endeavored to prevent the killing."[26] There was no evidence adduced in this case that petitioner attempted to prevent his companions from shooting the victim. "Thus, regardless of the acts individually performed by [the petitioner] and his co-accused, and applying the basic principle in conspiracy that the `act of one is the act of all,' [the petitioner] is guilty as a co-conspirator. Being co-conspirators, the criminal liabilities of the [petitioner and his co-accused] are one and the same."[27]

The Proper Penalty

The crime of robbery with homicide is punishable under Article 294 (as amended by Republic Act No. 7659) of the Revised Penal Code by reclusion perpetua to death. Article 63[28] 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. Considering that no modifying circumstance was proven to have attended the commission of the crime, the trial court correctly sentenced the petitioner to suffer the penalty of reclusion perpetua.[29]

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The Civil Liabilities

In robbery with homicide, civil indemnity and moral damages in the amount of P50,000.00 each is granted automatically in the absence of any qualifying aggravating circumstances.[30] These awards are mandatory without need of allegation and evidence other than the death of the victim owing to the fact of the commission of the crime. In this case, the CA properly awarded the amount of P50,000.00 as civil indemnity. In addition, we also award the amount of P50,000.00 as moral damages.[31]

To be entitled to compensatory 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 to the injured party. "[R]eceipts should support claims of actual damages."[32] Thus, as correctly held by the trial court and affirmed by the CA, the amount of P14,500.00 incurred as funeral expenses can be sustained since these are expenditures supported by receipts. Also, the courts below correctly held petitioner liable to return the amount of P40,000.00 which was stolen from the gas station before the victim was shot and killed.

WHEREFORE, the Decision of the Court of Appeals in CA-G.R. CR.-H.C. No. 01192 that affirmed with modification the Decision of the Regional Trial Court of Malolos, Bulacan, Branch 12, in Criminal Case No. 1632-M-2001 is AFFIRMED with further MODIFICATION that petitioner is hereby ordered to pay the heirs of the victim moral damages in the amount of P50,000.00.

SO ORDERED.

Corona, C.J., (Chairperson), Velasco, Jr., Leonardo- De Castro, and Perez, JJ., concur.

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[1] CA rollo, pp. 120-132; penned by Associate Justice Conrado M. Vasquez, Jr. and concurred in by Associate Justices Juan Q. Enriquez, Jr. and Japar B. Dimaampao.

[2] Records, pp. 140-148; penned by Judge Crisanto C. Concepcion.

[3] Id. at 1.

[4] Id. at 30.

[5] Id. at 148.

[6] Id. at 158-167.

[7] Id. at 168-169.

[8] G.R. Nos. 147678-87, July 7, 2004, 433 SCRA 640.

[9] CA rollo, p. 132.

[10] Rollo, p. 12.

[11] Chavez v. Public Estates Authority, 451 Phil. 1, 41 (2003).

[12] Records, p. 158.

[13] Id. at 148.

[14] People v. Ong, G.R. Nos. 162130-39, May 5, 2006, 489 SCRA 679, 688.

[15] Heirs of Generoso A. Juaban v. Bancale, G.R. No. 156011, July 3, 2008, 557 SCRA 1, 13.

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[16] People v. Dela Cruz, G.R. No. 168173, December 24, 2008, 575 SCRA 412, 436.

[17] TSN, September 11, 2001, pp. 10-13.

[18] People v. Mangat, 369 Phil. 347, 360 (1999).

[19] People v. Daen, Jr., 314 Phil. 280, 292 (1995).

[20] TSN, October 11, 2001, p. 4.

[21] People v. Foncardas, 466 Phil. 992, 1006 (2004).

[22] People v. Lee Hoi Ming, 459 Phil. 187, 194 (2003).

[23] People v. Pidoy, 453 Phil. 221, 228 (2003).

[24] RULES OF COURT, Rule 131, Section 3(m).

[25] People v. Macalaba, 443 Phil. 565, 578 (2003).

[26] People v. Reyes, 369 Phil. 61, 80 (1999).

[27] People v. Villanueva, Jr., G.R. No. 187152, July 22, 2009, 593 SCRA 523, 547.

[28] RULES FOR THE APPLICATION OF INDIVISIBLE PENALTIES.

[29] People v. Musa, G.R. No. 170472, July 3, 2009, 591 SCRA 619, 643-644.

[30] Id. at 644.

[31] See also People v. Esoy, G.R. No. 185849, April 7, 2010.

[32] People v. Guihama, 452 Phil. 824, 844 (2003).

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