PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. SAMUEL ALGARME Y BONDA @ “STINGRAY” (DECEASED) AND RIZALDY GELLE Y BISCOCHO, ACCUSED-APPELLANTS.

G.R. No. 175978. February 12, 2009

Ponente: BRION, J.

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BRION, J.:

We review in this appeal the September 7, 2006 decision of the Court of Appeals[1] (CA) in CA-G.R. CEB-CR-HC No. 00239, affirming with modification the June 25, 2002 decision of the Regional Trial Court (RTC), [2] Branch 60, Cadiz City. The RTC decision found accused-appellants Samuel Algarme y Bonda (Samuel) and Rizaldy Gelle y Biscocho (Rizaldy) guilty of the crime of robbery with homicide, and sentenced them to suffer the death penalty.

ANTECEDENT FACTS

The prosecution charged the appellants before the RTC with the special complex crime of robbery with homicide under an Information that states:

> That on or about 2:45 a.m. of September 19, 1995 at Cadiz City Park, Cadiz City, Negros Occidental, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused conspiring, confederating and helping one another with evident premeditation and treachery and with intent to kill, did then and there, willfully, unlawfully and feloniously assault, attack and stab to death one Loreto Batarilan y Ladiona, a tricycle driver, in order to rob, steal, and take away a belt bag containing money and the wrist watch Seiko 5; and inflicting upon the person of Loreto Batarilan the following injuries, to wit:
> Penetrating to perforating stab wounds:
>
> *2 cm. at epigastric area
> *1-2 cm. in the following areas of the back
> =11[th] rib scapular line, right
> =4 wounds at right scapular area
> =4 wounds at left scapular area
> =1wound at interscapular area, left
> =2 wounds infrascapular area, left

*1 wound supraclavicular area, left
*1 wound infra-suricular area, left

CAUSE OF DEATH: Cardio-pulmonary arrest due to hypovolemic shock secondary to Multiple Stab wounds, which directly caused the death of the said victim Loreto Batarilan, to the damage and prejudice of the heirs of the said victim in the amount, to wit:

> P50,000.00 - as indemnity for the death of the victim.

ACT CONTRARY TO LAW.[3]

The appellants pleaded not guilty to the charge. The prosecution presented the following witnesses in the trial on the merits that followed: Rudy Pepito (Rudy); Dr. Jimmily Aguiling (Dr. Aguiling); Norman Palma (Norman); Police Officer 3 Landolfo Acita (PO3 Acita); and Alicia Batarilan (Alicia). Rizaldy was the lone defense witness.

Rudy narrated that he slept at the Maricom Detachment Office located in Punta Cabahug, Cadiz City and rode a tricycle bound for Ceres Bus Terminal at around 2:45 a.m. of September 19, 1995 because his service vehicle broke down.[4] As the tricycle passed by the Cadiz City Park, he saw a parked empty tricycle and an old man being stabbed by three (3) persons. Two (2) persons held the victim while the third one stabbed him. Rudy described the person who stabbed the victim to be "white and tall," while the other two (2) who held the victim were "short."[5]

He further narrated that the victim was stabbed several times in front and at the back and cried for help as he was being stabbed. The driver of the tricycle he was riding, apparently afraid, increased the vehicle's speed as they passed the stabbing scene. When they reached the Ceres Bus Terminal, he (Rudy) immediately boarded a bus bound for Sagay.[6] He returned to Cadiz on September 21, 1995 and told Cesar Ladiona (Cesar), a barangay tanod, that he saw a person being stabbed at the park in the morning of September 19. Cesar brought him to the Cadiz City Jail where he was asked whether he could recognize the assailants. He identified the person who stabbed the victim from among the prisoners in jail. [7]

He testified on cross-examination that the tricycle he was riding was "very near" the scene of the stabbing incident,[8] and that the park was very brightly lit that night.[9] He stated that he did not immediately report the stabbing incident upon arriving at the Ceres Bus Terminal because he was afraid and because the Ceres bus bound for Sagay was already leaving.[10] When he reported the stabbing incident to Cesar on September 21, 1995, Cesar asked him if he could identify the assailants. He replied that he could, but only through their faces. Cesar then brought him to the city jail[11] where the Chief of Police asked him to point out the persons responsible for the stabbing he reported. He recognized two (2) of the assailants from among the many prisoners inside the jail. He recalled that the prisoners were not brought out of their cell when he was asked to identify the assailants.[12]

Dr. Aguiling, Medical Officer III at the Cadiz City Emergency Clinic, testified that he went to Cabahug Street near the City Hall in the morning of September 19, 1995 at the request of the police. At the place, he saw the body of an elderly male person sprawled on the ground, about 10 meters away from a parked empty tricycle.[13] He found that of the 12 wounds inflicted on the victim's body, four (4) were fatal. The wounds could have been caused by a bladed weapon.[14] According to Dr. Aguiling, the victim's cause of death was "cardio-pulmonary arrest due to hypovolemic shock secondary to multiple stab wounds."[15]

Norman, a tricycle driver residing in Cadiz City, narrated that he brought his passengers to Ester Pharmacy and Villa Consing, respectively, in the early morning of September 19, 1995; afterwards, he went to Cabahug Street and saw Melanie, the wife of a co-driver. Melanie asked him to look for her (Melanie's) husband. Melanie boarded his tricycle and requested to be brought to the Ester Pharmacy.[16] On the way there, he saw Loreto Batarilan (Loreto) driving his own tricycle and trailing his; he also saw three (3) persons walking towards the direction of the Emergency Clinic. He identified two of them as Rizaldy and "Stingray" both of whom he had known for a long time. He went back towards the direction of the City Hall after Melanie alighted at the Ester Pharmacy.[17] He saw Loreto's parked tricycle as he passed by the City Hall on Cabahug Street; he then saw Loreto's body full of blood lying on the street. He also saw Rizaldy, "Stingray," and a certain John Doe, about "two (2) extended arms length" away from the victim's body, walking towards the park carrying a belt bag.[18] He recalled that there were no other persons in the park during that time. He went to the police headquarters to

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report the incident, but the headquarters was closed. He then went to the Ester Pharmacy and requested the security guard to call the police.[19]

PO3 Acita, Duty Investigator at the Cadiz City Police Station, testified that at around 3:00 a.m. of September 19, 1995, the desk officer received a telephone call informing the police about a dead person found near the City Hall. Together with five (5) members of the Cadiz Police, he immediately went to Cabahug Street to verify the report. At the reported place, he saw the body of a person lying on the ground, full of blood. He likewise saw a tricycle parked near the City Park along Cabahug Street. He inspected the tricycle and saw blood stains on the driver's seat. Thereafter, he and the other members of the police requested Dr. Aguiling and a photographer to come to the crime scene.[20]

Alicia, the victim's wife, declared on the witness stand that her husband was a tricycle driver; that her husband wore a Seiko watch when he left to ply his route in the early morning of September 19, 1995. He also carried a belt bag containing P1,200.00 plus loose change; the money was intended for the purchase of spare parts for the tricycle.[21] She further narrated that she only learned of the death of her husband from her daughter in the morning of September 19, 1995. Only her children went to the crime scene. She added that her husband earned P200.00 a day.[22]

The defense presented appellant Rizaldy who gave a different version of events.

Rizaldy testified that he did not know his co-accused, Samuel, prior to their arrest on September 21, 1995. At around 2:45 a.m. of September 19, 1995, he was watching a billiard game in front of his house on Mabini Street, Cadiz City.[23] Police Officer Boy Cañedo (PO Cañedo) arrested him at around 9:00 a.m. of September 21, 1995. He was brought to the police station where PO Cañedo showed him a shirt and a black shorts, and asked whether he owned them. When he answered in the negative, PO Cañedo told him to go home. Thereafter, he was surprised to receive a notice from the prosecutor's office informing him that he was one of the accused in the killing of Loreto. He and Samuel were brought to the City Prosecutor's Office where they were asked to secure the services of a lawyer and to file their counter-affidavits within 10 days. A certain Atty. Del Pilar came to him and advised him not to make a counter-affidavit.[24] He insisted that he had slept in the house of the spouses Mercedes and Manuel Apuhin (spouses Apuhin) in the morning of September 19, 1995, and that Mercedes told him at around 7 a.m. that an old man had been killed in the park.[25]

He admitted on cross-examination that Norman identified him at the police headquarters as one of the persons who had robbed and killed the victim.[26] He stated that he had been staying since 1994 at the house of the spouses Apuhin as a household helper. He likewise stated that the Apuhin house was a two-minute walk from the Cadiz City Park.[27]

The RTC convicted appellants Samuel and Rizaldy of the special complex crime of robbery with homicide in its decision of June 25, 2002, as follows:

> WHEREFORE, in view of all the foregoing, this Court finds accused Samuel Algarme y Bonda and Rizaldy Gelle y Biscocho (all detained) GUILTY beyond reasonable doubt of the crime of Robbery with Homicide as charged in the Information and there being an aggravating circumstance of treachery attendant thereto without any mitigating circumstance to offset the same, hereby sentences the accused to the penalty of DEATH.
>
> The two accused are all hereby ordered immediately committed to the National Penitentiary for the execution of their sentence, and the Clerk of Court of this Court is hereby directed to immediately forward the entire records of this case to the Supreme Court for automatic review.
>
> The two accused are further ordered to jointly and solidarily pay the heirs of the victim the amount of FIFTY THOUSAND PESOS (P50,000.00) by way of indemnity for the death of LORETO BATARILAN, together

> with the amount of THREE THOUSAND PESOS (P3,000.00) representing the cash amount and the value of the wrist watch of the victim by way of reparation, and the amount of THREE HUNDRED SEVENTY-FOUR THOUSAND FOUR HUNDRED PESOS (P374,400.00) by way of the loss of the earning capacity of the victim, Loreto Batarilan, plus the amount of FIFTY THOUSAND PESOS (P50,000.00) as moral damages, and the further amount of TWENTY THOUSAND PESOS (P20,000.00) as exemplary damages. The award for the loss of earning capacity together with the moral and exemplary damages for which docket fees and legal fees, the Clerk of Court of this Court is hereby directed to charge as liens on the award of damages the said docket and other legal fees.
>
> The case against alias "Stingray" who is still at-large is hereby ordered ARCHIVED to be immediately revived upon his arrest.
>
> Costs against accused Samuel Algarme and Rizaldy Gelle.
>
> SO ORDERED.[28]

The RTC, after receiving an information that one of the appellants had escaped confinement and subsequently been killed in a shoot-out with the police, issued an Order directing the counsels for both the prosecution and defense, as well as the BJMP Warden and Chief of Police of PNP Cadiz City, to submit a report on the incident.[29] They reported and confirmed that Samuel had indeed been killed on February 29, 1996 in a police shoot-out. Based on this confirmed development, the trial court issued an Order dated October 17, 2002 modifying the dispositive portion of its June 25, 2002 decision and dismissing the case against Samuel.[30]

On appeal, we endorsed this case to the CA for appropriate action and disposition[31] pursuant to our ruling in People v. Mateo.[32] The CA, in its decision of September 7, 2006, affirmed the RTC decision with the modification that the death penalty imposed on Rizaldy be reduced to reclusion perpetua.

In his brief,[33] the appellant argues that the RTC erred -

- in giving credence to the positive identification by the two (2) prosecution witnesses pointing to him as the perpetrator of the crime charged;

- in finding that a conspiracy existed between him and his co- accused Samuel;

- in imposing the death penalty even if treachery had not been proven; and

- in convicting him of the crime charged even if its elements had not been proven beyond reasonable doubt.

THE COURT'S RULING

We resolve to deny the appellant's appeal as his guilt has been proven beyond reasonable doubt, but we modify the lower courts' decision with respect to the crime committed, the penalty imposed, and the awarded indemnities.

Sufficiency of the Prosecution Evidence

An established rule in appellate review is that the trial court's factual findings - including its assessment of the credibility of the witnesses, the probative weight of their testimonies, and the conclusions drawn from the factual findings - are accorded great respect and even conclusive effect. In our review of cases, these factual findings and conclusions assume greater weight if they are affirmed by the CA. Despite this enhanced persuasive effect, we nevertheless fully scrutinize the records (as we did in this case), since the penalty of reclusion perpetua that the CA imposed on the appellant demands no less than this kind of careful and deliberate consideration.[34]

A distinguishing feature of the present case is the presence of a witness - Rudy - who, in his November 27, 1995

testimony, positively identified the appellants as the perpetrators. To directly quote from the records:

PROSECUTOR FRANCES V. GUANZON

Q:

So when you were on board the tricycle and you were passing the City Park, has [sic] there any unusual incident that transpired?

RUDY PEPITO

A:

I saw a tricycle.

Q:

Aside from the tricycle, what other things did you see?

A:

An old man was stabbed.

x x x

Q:

You said that an old man was stabbed? Did you see the person who stabbed the old man?

A:

I saw.

Q:

How many persons stabbed the old man?

A:

Three persons.

Q:

How was the old man stabbed by these three (3) persons?

A:

The old man was held by two persons while the other one stabbed him.

Q:

Can you describe the person, the one who actually stabbed the victim?

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A:

Yes, ma'am.

Q:

How does he look?

A:

He was the one who stabbed the old man. He was white and tall.

Q:

You said there were two persons who held the person while this white tall person stabbed the old man. Can you describe the person who held the old man, their appearance, their height, if you can recall?

A:

The two persons were short.

x x x x

Q:

When you arrived on September 21, 1995 from Sagay to Cadiz, was there anything that transpired?

A:

When I arrived, I told Cesar that somebody was stabbed at the park.

Q:

Who is this Cesar?

A:

A Barangay Tanod.

Q:

So, when you told him about what you saw on September 19, 1995, what did this Cesar, who is a barangay tanod, do?

A:

Cesar brought me to the Jail and asked me to identify the person.

Q:

So, in other words, you were brought by barangay tanod Cesar to the Cadiz City Jail to look at the persons who were inside the jail, is that what you mean?

A:

Yes.

Q:

So, at the City Jail, were you able to identify the person who stabbed Loreto Batarilan on the evening of September 19, 1995?

A:

Yes, ma'm.

Q:

How many were they did you see inside the Cadiz City Jail? [sic]

A:

Three persons.

Q:

When you said that there were three and the one who actually stabbed was tall and white? If they are present in Court, can you identify
him? [sic]

A:

Yes, ma'am.

Q:

Please look around and point to the person who you described as tall and white?

A:

(Witness pointing to a person inside the courtroom who when asked answer [sic] to the name Samuel Algarme)

Q:

You mentioned also that out of these two other persons who are short held the old man while he was being stabbed by a white man. [sic] If one of these short men who held Loreto Batarilan on September 19, 1995 is present in this courtroom, can you identify him?

A:

Yes, ma'am.

Q:

Please look around and point to one of these two persons who held Loreto Batarilan on the evening of September 19, 1995 while he was
stabbed by Samuel Algarme?

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A:

(Witness pointing to a person sitting inside the Courtroom who when asked answered to the name Rizaldy Gelle)

Q:

You said that there were three? What about the other persons who held Loreto Batarilan when he was stabbed by Samuel Algarme, if he is
present in court, can you identify him?

A;

Yes, ma'am.

Q:

Is he present in Court today?

A:

He is not here, ma'am.[35] [Emphasis ours]

Rudy's testimony was clear and straightforward; he never wavered in pointing to the appellants as the persons who held and stabbed Loreto in the morning of September 19, 1995. Significantly, the testimony of another prosecution witness - Norman - supported Rudy's story with respect to the presence of the appellants at the crime scene. Although Norman did not say anything categorical about the actual stabbing, he saw the appellants - whom he had known for a long time - in the same vicinity as the victim before the stabbing and after the stabbing walking near the victim's lifeless body and carrying the latter's belt bag.

These testimonies, when considered together, lead to no conclusion other than the appellants' direct participation in the stabbing that led to the victim's death. To reiterate, the appellants and the victim were in the same vicinity before the stabbing; soon after, the appellants were seen holding and stabbing the victim; immediately thereafter, they were also seen walking away, carrying the victim's bag. In considering these testimonies, we find it very significant that the defense failed to refute the testimonies of Rudy and Norman through evidence showing motive that could lead them to falsely testify against the appellants. In the absence of such evidence, we can conclude that their testimonies are worthy of full faith and credit.[36]

Admissibility of Identification

Rizaldy challenges the reliability and integrity of the positive identification Rudy made. He claims that his "in-court identification was facilitated by a highly suggestive and irregular out-of-court identification process." He harps on the fact that the out-of-court identification was not made in a police line up but in a mere show-up.

We find this challenge to be baseless as we fail to see any flaw that would invalidate Rudy's out-of-court identification of the appellants. We see no basis, too, to support the conclusion that the in-court identification - an identification made independently of the out-of court identification - is itself tainted with invalidity.[37]

In People v. Teehankee, Jr.,[38] we explained the procedure for out-of- court identification and the test to determine its admissibility:

> Out-of-court identification is conducted by the police in various ways. It is done thru show-ups where the suspect alone is brought face-to-face with the witness for identification. It is done thru mug shots where photographs are shown to the witness to identify the suspect. It is also done thru line-ups where a witness

> identifies the suspect from a group of persons lined up for the purpose x x x x In resolving the admissibility of and relying on out-of-court identification of suspects, courts have adopted the totality of circumstances test where they consider the following factors, viz: (1) the witness' opportunity to view the criminal at the time of the crime; (2) the witness' degree of attention at that time; (3) the accuracy of any prior description, given by the witness; (4) the level of certainty demonstrated by the witness at the identification; (5) the length of time between the crime and the identification; and, (6) the suggestiveness of the identification procedure.

Applying the totality-of-circumstances test, we find Rudy's out-of-court identification to be reliable and thus admissible. First, Rudy testified that the tricycle he was riding passed "very near" the place where the victim was stabbed, and that the park at that time was "very bright." Second, Rudy was simply riding a tricycle when the stabbing, a very startling incident, happened; no competing incident took place to draw his attention away from the incident; and the event, being startling, consumed his full attention and gave him the chance to see clearly the features of the person stabbed, the manner he was stabbed, and the appearance of the assailants. Third, he stated with certainty that he could identify the assailants' faces when he reported the incident to barangay tanod Cesar. Fourth, the identification took place within two (2) days from the stabbing incident; he explained fully why it took him two days to come forward and report the stabbing. Finally, there was nothing "suggestive" or irregular about Rudy's out-of-court identification of the appellants; it was not even a show-up - as Rizaldy suggests where the suspects, tagged as the persons to be identified, are brought face-to-face with the witness for confirmation of identification. When Rudy arrived at the police station, he was asked to point to the assailants from among the many prisoners inside the cell; he was not compelled to focus his attention on any specific person or persons. There was also no evidence that the police had supplied or even suggested to Rudy that the appellants were the suspected perpetrators. Thus, Rudy's identification was spontaneous, independent, and untainted by any improper suggestion.

We do not agree that an identification is unreliable simply because it was not conducted in a police line up. No law or police regulation requires a police line up for proper identification in every case. There can still be a proper and reliable identification even in the absence of a line up, for as long as the identification is unaffected by prior or contemporaneous improper suggestions that point out the suspect to the witness as the perpetrator to be identified. [39]

Granting arguendo that the out-of-court identification was irregular as the appellants claim, this identification did not foreclose the admissibility of Rudy's independent in-court identification.[40] It must be stressed that in convicting the appellants for the crime charged, the courts a quo did not rely solely on Rudy's identification at the city jail or on an in- court identification based on the city jail identification. Rudy's November 27, 1995 court testimony clearly shows that he positively identified Samuel and Rizaldy independently of the previous identification he made at the city jail. His testimony, including his identification of the appellants, was positive, straightforward, and categorical. In People v. Timon[41] where the appellants likewise questioned the reliability of their in-court identification vis-à-vis their out-of-court identification, this Court ruled:

> Even assuming arguendo the appellants' out-of-court identification was defective, their subsequent identification in court cured any flaw that may have initially attended it. We emphasize that the "inadmissibility of a police line-up identification x x x should not necessarily foreclose the admissibility of an independent in-court identification." We also stress that all the accused-appellants were positively identified by the prosecution eyewitnesses during the trial.[42]

The Appellant's Alibi

In stark contrast with the prosecution's case is Rizaldy's weak and uncorroborated defense.

He claimed he was in front of his house watching a billiard game in the early morning of September 19, 1995. On

cross-examination, he retracted this statement and insisted that he slept at the house of the spouses Apuhin located on Cabahug Street on September 19, 1995.

These inconsistencies impact on a basic component that the defense of alibi requires - that there be physical impossibility for the accused to be at the scene of the crime or its immediate vicinity at the time of its commission. If the appellant cannot be consistent about his whereabouts, then he cannot hope to prove the physical impossibility that the defense of alibi requires in order to merit serious consideration.

At any rate, the physical impossibility for the appellant to be at the scene of the crime on the date of its commission is negated by his own testimony that the Apuhin house is a mere two-minute walk from the city park. More importantly, the appellant was positively identified by Rudy. The settled rule in weighing contradictory statements is that alibi cannot prevail over the positive identification of the appellant by a credible witness, as in this case. [43]

The Crime Committed

Article 294, paragraph 1 of the Revised Penal Code provides:

> 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.

A special complex crime of robbery with homicide takes place when a homicide is committed either by reason, or on the occasion, of the robbery.[44] 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.[45] 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.[46] The intent to rob must precede the taking of human life but the killing may occur before, during or after the robbery.[47]

In People v. Salazar,[48] this Court expounded on the concept of robbery with homicide under Article 294(1) of the Revised Penal Code, thus:

> The Spanish version of Article 294 (1) of the Revised Penal Code reads: "1.0--Con la pena de reclusion perpetua a muerte, cuando con motivo o con ocasion del robo resultare homicidio." Chief Justice Ramon C. Aquino explains that the use of the words "con motivo...del robo" permits of no interpretation other than that the intent of the actor must supply the connection between the homicide and the robbery in order to constitute the complex offense. If that intent comprehends the robbery, it is immaterial that the homicide may in point of time immediately precede instead of follow the robbery. Where the original design comprehends robbery, and homicide is perpetrated by reason or on the occasion of the consummation of the former, the crime committed is the special complex offense, even if homicide precedes the robbery by an appreciable interval of time. On the other hand, if the original criminal design does not clearly comprehend robbery, but robbery follows the homicide as an afterthought or as a minor incident of the homicide, the criminal acts should be viewed as constitutive of two offenses and not of a single complex offense. Robbery with homicide arises only when there is a direct relation, an intimate connection, between the robbery and the killing, even if the killing is prior to, concurrent with, or subsequent to the robbery. [Emphasis ours]

In the case before us, the RTC convicted the appellants of robbery with homicide based on the testimonies of

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Rudy, Alicia, and Norman. The CA affirmed this finding without any explanation on how the crime came to be the special complex crime of robbery with homicide. To be sure, Rudy's testimony clinched the case against the appellants with respect to the victim's stabbing and resulting death. The lower courts apparently deduced the intent to rob from the testimonies of Alicia and Norman.

Alicia, in her testimony of August 27, 1996, testified that her husband had a belt bag containing P1,200.00, more or less, and wore a Seiko watch when he left to ply his route in the early morning of September 19, 1995. To directly quote from the records:

PROSECUTOR FRANCES V. GUANZON

Q: So on September 19, 1995 at about 12:00 midnight he was still alive, did he not go out to drive a tricycle at that time?

ALICIA BATARILAN:

A: Yes, ma'am. He went out to drive his tricycle.

x x x

Q: When he left your house was he carrying anything or did he have anything in his possession?

A: He was [sic] with him a belt bag and a watch.

Q: What was the content of the belt bag if you know?

A: His money.

Q: Did you know how much his money was?

A: P1,200.00 and loose change.

Q: Why do you know that he had with him P1,200.00 and loose change at that time.

A: He had with him P1,200.00 because he was intending to buy spare parts of the tricycle.[49]

Norman, in his testimony dated June 6, 1996, testified that he saw the appellants, together with a John Doe, carrying a belt bag and walking away from the victim's body. We quote the pertinent portions of his testimony:

PROSECUTOR FRANCES V. GUANZON

Q:

While you were at Cabahug Street somewhere at the City Park, was there anything that you had noticed?

NORMAN PALMA

A:

Yes ma'am.

Q:

What was that?

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A:

I saw the tricycle of the old man without anybody on it.

Q:

Who is this old man you are referring to?

A:

I am referring to Loreto Batarilan.

Q:

Where was the tricycle located?

A:

Beside the City Park near the globe.

Q:

And then what other things did you see?

A:

I saw the old man lying down with blood.

Q:

And where was the old man situated?

A:

Beside the City Hall.

Q:

And what else did you see?

A:

I saw the three (3) persons walking towards the park with belt bag.

Q:

And who were these (3) persons you saw going towards the park carrying a belt bag?

A:

Stingray.

Q:

Who else?

A:

Gelle.

Q:

And you said there were three, who was the other one?

A:

I do not know his name but I can recognize his face.

Q:

What was the distance of these three persons when you saw them from the body of the old man you said?

A:

Maybe about two (2) extended arms length away.

Q:

Were there other persons walking also towards the park at that time aside from these three (3) persons?

A:

No more.

x x x x

Q:

You mentioned that you saw three (3) persons and you mentioned Stingray. If this Stingray is present in Court, can you identify him?

A:

Yes, ma'am.

Q:

Please look around and point to Stingray?

A:

He is not around.

Q:

You said the other one is named Rizaldy Gelle. Is he present in Court?

A:

Yes, ma'am.

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Q:

Please look around and point to Rizaldy Gelle.

COURT:

Witness pointing to a person sitting inside the courtroom who when asked answered to the name of Rizaldy Gelle. x x x[50] [Emphasis ours]

Based on these testimonies, the RTC concluded that the appellants' primary criminal intent was to rob the victim. Thus it held:

> Likewise, witness Alicia Batarilan also testified that her husband, the victim herein, went out from their houses for his usual schedule of driving, the victim had with him a belt bag containing the amount of One Thousand Two Hundred Pesos (P1,200.00) plus loose change and the victim was wearing a wrist watch valued at One Thousand Eight Hundred Pesos (P1,800.00), and this fact was proven by the prosecution that a robbery took place before the killing of the victim considering that after the incident the belt bag containing cash and the wrist watch of the victim was seen being worn by one of the three persons who perpetrated the crime, since as testified to by witness Norman Palma that when he saw the three persons walking towards the park with a belt bag, no other persons were seen in the vicinity of the crime immediately before or after the commission of the crime, thus it is logical to conclude that the three persons indeed perpetrated the robbery and the killing of the victim x x x

To sustain a conviction for the special complex crime of robbery with homicide, the prosecution must establish with certitude that the killing was a mere incident to the robbery, the latter being the perpetrators' main purpose and objective.[51] It is not enough to suppose that the purpose of the author of the homicide was to rob; a mere presumption of such fact is not sufficient.

In the case before us, the testimonies of Norman and Alicia merely established two (2) facts: that the victim carried a belt bag containing money on that fateful morning of September 19, 1995; and the appellants were seen carrying the said belt bag walking near the victim's body. From these established facts, we hold that the prosecution failed to establish the linkage required by law between a robbery and a homicide to characterize the crime as the special complex crime of robbery with homicide; there was no showing of the appellants' intention - determined by their acts, prior to, contemporaneous with and subsequent to the commission of the crime - to commit robbery. There was likewise no testimony to show whether the appellants intended to kill the victim in order to steal the belt bag, or whether the killing was merely an afterthought. Thus, the appellants' primary intent remains a mystery. The fact that they were in possession of the victim's belt bag after the killing does not ipso facto give rise to the conclusion that their overriding intention was to rob the victim.

We have held in several cases[52] that where the evidence satisfactorily establishes that the appellant did kill and unlawfully take the personal property of the victim, but the original criminal design to commit robbery was not duly proven - the accused-appellant should be held liable for the separate crimes of homicide or murder (as the case may be) and theft, and not for the special complex crime of robbery with homicide.

This Court recognizes that the Information accused the appellants of the crime of "robbery with homicide." The established rule, however, is that the nature and character of the crime charged are determined, not by the given designation of the specific crime, but by the facts alleged in the Information. [53] In this case, all the elements relevant to the killing and the taking of property were properly stated in the Information; only the statement of the specific crime committed - a conclusion of law - remained to be correctly made. This, we do in this Decision.

Homicide or Murder ?

The Information alleged the aggravating circumstance of treachery. However, we cannot appreciate this circumstance as the prosecution failed to show proof that the appellants made some preparation to kill the victim in a manner that would ensure the execution of the crime or make it impossible or difficult for the person attacked to defend himself.[54]

The Information likewise alleged the aggravating circumstance of evidence premeditation. For this aggravating circumstance to be appreciated, the following must be proven: 1) the time when the accused decided to commit the crime; 2) an overt act manifestly indicating that the accused clung to such determination; and 3) between the decision and the execution, a sufficient lapse of time that allowed for reflection on the consequences of the act contemplated.[55] None of these elements have been established in the case before us.

In the absence of any circumstance which would qualify the victim's killing to murder, we hold that the appellant should be held liable only for the crime of homicide.

The Proper Penalties

The penalty for homicide under Article 249 of the Revised Penal Code is reclusion temporal. In the absence of any modifying circumstance proven by the prosecution or by the defense, the penalty shall be imposed in its medium period. Applying the Indeterminate Sentence Law, the appellant can be sentenced to an indeterminate penalty whose minimum shall be within the range of prision mayor (the penalty next lower in degree to that provided in Article 249) and whose maximum shall be within the range of reclusion temporal in its medium period.

> Article 309 of the Revised Penal Code provides the following penalties for the crime of theft:
>
> Art. 309. Penalties. - Any person guilty of theft shall be punished by:
>
> xxx
>
> 3. The penalty of prision correccional in its minimum and medium periods, if the value of the property stolen is more than 200 pesos but does not exceed 6,000 pesos.

In the absence of any mitigating or aggravating circumstance, the maximum term of the indeterminate penalty, which is prision correccional in its minimum and medium periods, should be imposed in the medium period or one (1) year, eight (8) months and twenty-one (21) days, to two (2) years, eleven (11) months and ten (10) days. The minimum of the indeterminate penalty is anywhere within the range of the penalty next lower, or arresto mayor, in its medium and maximum periods which is two (2) months and one (1) day to six (6) months.

Civil Indemnity

a. Homicide

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.[56] Pursuant to current jurisprudence,[57] an award of P50,000.00 to the victim's heirs is in order.

Moral damages are mandatory in cases of murder and homicide without need of allegation and proof other than the death of the victim. Consistent with this rule, we award the amount of P50,000.00 as moral damages in accordance with prevailing jurisprudence.[58]

We likewise award loss of earning capacity to the victim's heirs. As a rule, documentary evidence should be presented to substantiate a claim for loss of earning capacity. By way of exception, damages may be awarded despite the absence of documentary evidence, provided testimony exists that the victim was either (1)

self-employed, earning less than the minimum wage under current labor laws, and judicial notice may be taken of the fact that no documentary evidence is usually available in the victim's line of work; or (2) employed as a daily wage worker, earning less than the minimum wage under current labor laws.[59] Given Alicia's testimony that her husband was a tricycle driver earning P200.00 a day, we hold that the heirs are entitled to an award representing the loss of the victim's earning capacity computed under the following formula:

> Net Earning Capacity = 2/3 x (80 less the age of the victim at the time of death) x (Gross Annual Income less the Reasonable and Necessary Living Expenses)

The records show that Loreto's annual gross income was P72,000.00 per annum computed from his monthly rate of P6,000.00 (or P200.00 per day). His reasonable and necessary living expenses are estimated at 50% of this gross income, leaving a balance of P36,000.00. His life expectancy, on the other hand is assumed to be 2/3 of the age 80 less 62, his age at the time of death. Applying the formula yields the net earning capacity of P432,000.00.

We can only award actual damages to the extent actually proven by evidence, i.e., upon competent proof and the best evidence obtainable by the injured party. In this case, the prosecution failed to present any receipt to prove the claim for expenses incurred in relation with the victim's death. Nevertheless, we can award P25,000.00 as temperate damages pursuant to our ruling in People v. Abrazaldo[60] that temperate damages of P25,000.00 may be awarded in place of actual damages, where the amount of actual damages for funeral expenses cannot be determined with certainty under the rules of evidence.

b. Theft

The only evidence of the amount stolen from the victim is the belt bag that, according to Alicia contained P1,200.00, more or less. No valuation was ever made on the cost of the belt bag. While the victim also had a Seiko watch when he left home before he died, no proof exists that the appellants took the watch. Hence, we can only order the heirs indemnified to the extent of P1,200.00.

WHEREFORE, in view of these considerations, the Decision of the Court of Appeals in CA-G.R. CEB-CR-HC No. 00239 is MODIFIED as follows:

(1)

Appellant Rizaldy Gelle is found GUILTY of the separate crimes of homicide and theft.

(2)

For the crime of homicide, the appellant is SENTENCED to suffer the indeterminate penalty of imprisonment of twelve (12) years of prision mayor, as minimum, to seventeen (17) years and four (4) months of reclusion temporal, as maximum; he is likewise ORDERED to PAY the victim's heirs the following amounts: (a) P50,000.00 as civil indemnity; (b) P50,000.00 as moral damages; (c) P25,000.00 as temperate damages; and (d) P432,000.00 as indemnity for loss of earning capacity.

(3)

For the crime of theft, the appellant is SENTENCED to suffer the indeterminate penalty of imprisonment of six (6) months of arresto mayor, as minimum, to two (2) years, eleven (11) months and ten (10) days of prision correccional, as maximum; he is likewise ORDERED to PAY the victim's heirs the amount of P1,200.00 representing the value of the money stolen.

Costs against appellant Rizaldy Gelle y Biscocho.

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SO ORDERED.

Quisumbing, (Chairperson), Carpio Morales, Tinga, and Velasco, Jr., JJ., concur.

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[1] Penned by Associate Justice Agustin S. Dizon, and concurred in by Associate Justice Pampio A. Abarintos and Associate Justice Priscilla Baltazar-Padilla; rollo, pp. 3-9.

[2] Penned by Judge Renato D. Muñez; CA rollo, pp. 64-72.

[3] Records, pp. 1-2.

[4] TSN, November 27, 1995, p. 5.

[5] Id., pp. 4-6.

[6] Id., pp. 7-8.

[7] Id., pp. 8-10.

[8] Id., p. 15.

[9] Id., p. 18.

[10] Id., p. 20.

[11] Id., pp. 25-26.

[12] Id., pp. 28-31.

[13] TSN, February 6, 1996, pp. 4-7.

[14] Id., p. 12.

[15] Id., p. 13.

[16] TSN, June 6, 1996, pp. 4-5.

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

[18] Id., p. 8.

[19] Id., p. 9.

[20] TSN, August 27, 1996, pp. 4-6.

[21] Id., pp. 16-18.

[22] Id., pp. 18-20.

[23] TSN, October 12, 1999, p. 2.

[24] Id., pp. 3-4.

[25] Id., pp. 5-6.

[26] Id., p. 7.

[27] Id., p. 8.

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[28] CA rollo, pp. 64-72.

[29] Records, p. 141.

[30] Id., p. 150.

[31] Per our Resolution dated January 11, 2005.

[32] G.R. Nos. 147678-87, July 7, 2004, 433 SCRA 640, 656.

[33] CA rollo, pp. 41-62.

[34] People v. Ballesteros, G.R. No. 172696, August 11, 2008 citing People v. Garalde, G.R. No. 173055, April 13, 2007, 521 SCRA 327, 340.

[35] TSN, November 27, 1995, pp. 4-12.

[36] See People v. Laurente, G.R. No. 116734, March 29, 1996, 255 SCRA 543.

[37] People v. Navales, G.R. No. 135230, August 8, 2000, 337 SCRA 436.

[38] G.R. Nos. 111206-08, October 6, 1995, 249 SCRA 54.

[39] See People v. Escote, Jr., G.R. No. 140756, April 4, 2003, 400 SCRA 603.

[40] See People v. Almanzor. G.R. No. 124916, July 11, 2002, 384 SCRA 311.

[41] G.R. Nos. 97841-42, November 12, 1997, 281 SCRA 577.

[42] Id., p. 592.

[43] People v. Navales, supra note 37.

[44] People v. Mendoza, G.R. No. 115809, January 23, 1998, 284 SCRA 705.

[45] People v. Barreta, G.R. No. 120367, October 16, 2000, 343 SCRA 199.

[46] People v. Daniela, G.R. No. 139230, April 24, 2003, 401 SCRA 519, 534.

[47] People v. Escote, Jr., supra note 39, p. 630.

[48] G.R. No. 99355, August 11, 1997, 227 SCRA 67.

[49] TSN, August 27, 1996, pp. 17-18.

[50] TSN, June 6, 1996, pp. 7-10.

[51] See People v. Lara, G.R. No. 171449, October 23, 2006, 505 SCRA 137; People v. Concepcion, G.R. No. 131477, April 20, 2001, 357 SCRA 168; People v. Robante, G.R. No. 69307, October 16, 1989, 178 SCRA 552.

[52] People v. Concepcion, G.R. No. 131477, April 20, 2001, 357 SCRA 168; People v. Sanchez, G.R. No. 120655, October 14, 1998, 298 SCRA 48; People v. Salazar, supra note 48.

[53] People v. Salazar, id.

[54] People v. Ilo , G.R. No. 140731, November 21, 2002, 392 SCRA 326.

[55] People v. Catbagan, G.R. Nos. 149430-32, February 23, 2004, 423 SCRA 535.

[56] People v. Villa, Jr., G.R. No. 179278, March 28, 2008, 550 SCRA 480.

[57] People v. Tabuelog, G.R. No. 178059, January 22, 2008, 542 SCRA 301.

[58] People v. Eling, G.R. No. 178546, April 30, 2008.

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

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

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