

**ARMANDO VIDAR @ “RICKY”; NORBERTO BUTALON,(
SONNY MARBELLA @ “SPIKE”; AND JOHN DOES AND
PETER DOES, PETITIONERS, VS. PEOPLE OF THE PHILIPPINES,
RESPONDENT.**

G.R. No. 177361. February 01, 2010

Ponente: DEL CASTILLO, J.

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DEL CASTILLO, J.:

A person is killed, 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) 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 malefactor's main purpose and objective, 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.[1]

In the instant case, the prosecution satisfactorily proved that the crime committed by the petitioners was robbery with homicide.

Factual Antecedents

It was early evening of April 30, 2001, when army officer, Sgt. Julio D. Dioneda (Dioneda), was brutally murdered and valuables taken from his house located at Sitio Burabod, Barangay Poblacion, Bacon District, Sorsogon City.

Consequently, a criminal charge for Robbery with Homicide against herein petitioners Armando Vidar @ Ricky (Vidar), Norberto Butalon (Butalon), Sonny Marbella @ Spike (Marbella), and several Does was filed under an Information[2] which reads:

The undersigned accuses ARMANDO VIDAR @ "Ricky" of Sto. Domingo, Pto. Diaz, Sorsogon, NORBERTO BUTALON, of Maslog, Legaspi City, and SONNY MARBELLA @ "Spike" of Lungib, Pilar, Sorsogon and several other JOHN DOES and PETER DOES, of the crime of ROBBERY WITH HOMICIDE, defined and penalized under Article 294 par. 1 of the Revised Penal Code, committed as follows:

That on or about the 30[th] day of April 2001, at about 7:00 o'clock in the evening at Sitio Burabod, Barangay Poblacion, Bacon District, Sorsogon City, Philippines and within the jurisdiction of this Honorable Court, the above named accused, conspiring and confederating together and helping one another, armed with firearms, did then and there willfully, unlawfully and feloniously and with intent to gain, enter the dwelling of one Sgt. Julio D. Dioneda and once inside, took therefrom at gunpoint a Cal. 45 pistol, a wallet containing P1,000.00 cash, a crash helmet and a motorcycle all belonging to the said Sgt. Julio D. Dioneda; that on the occasion of the said robbery and for the purpose of enabling them to take, steal and carry away the items above mentioned

with ease, herein accused, in pursuance of their conspiracy, did then and there, willfully, unlawfully and feloniously, with treachery and taking advantage of their superior number and strength and with intent to kill, attack, assault and repeatedly shot the said Sgt. Julio D. Dioneda, inflicting upon him multiple gunshot wounds that caused his instantaneous death, to the damage and prejudice of his legal heirs.

CONTRARY TO LAW.

Sorsogon City, Sorsogon, July 8, 2002.

Petitioners, assisted by their counsel de parte, pleaded not guilty to the crime of Robbery with Homicide as charged in the Information. After pre-trial was terminated, trial on the merits followed.

The antecedent facts of this case as recounted by the prosecution witnesses Florecita Dioneda (Florecita) and Niña Dioneda Elemanco (Niña) that led to the conviction of the petitioners are as follows:

At about 7:00 o'clock in the evening of April 30, 2001, Florecita, wife of the victim, and her sister-in-law Niña, were inside the former's house at Burabod, Poblacion, Bacon District, Sorsogon City. They were watching television when three armed men suddenly barged inside. One of them, later identified as Marbella, poked a gun at Florecita while the other two ransacked the house taking a wallet, crash helmet and a .45 caliber firearm with its magazine. These items belong to Dioneda who was then taking a bath outside the house. Florecita and Niña followed the three men when the latter went out. At the yard, they saw the three men together with more or less 10 other persons surrounding Dioneda who was lying facing the ground. Despite Florecita's pleas not to kill her husband, Marbella and Vidar still fired a volley of shots causing Dioneda's instantaneous death. The three then boarded Dioneda's motorcycle and fled the area.

Niña corroborated the material details of the robbery and the killing and testified further that she could not forget the faces of the three malefactors as she was very sure that they were the ones who barged inside the house and later killed her brother.

Petitioners vehemently denied the accusations against them. Marbella averred that he does not know Dioneda and that he was in his house in Lungib, Pilar, Sorsogon on April 30, 2001 while Vidar asserted that he has no knowledge of the killing of Dioneda. Butalon, on the other hand, professed his innocence, claiming that he also does not know Dioneda and that he was in his house at Omoroy, Legaspi City on April 30, 2001. Collectively, they alleged that the possible motive behind the charge against them is that they were known members of the New People's Army (NPA).

Ruling of the Regional Trial Court

The Regional Trial Court of Sorsogon, Branch 52, relying on the credible and positive testimonies of the prosecution witnesses, rejected the defense interposed by the petitioners and accordingly rendered a Decision[3] on September 2, 2004 finding all of them guilty of the crime of robbery with homicide. The dispositive portion of said Decision reads:

WHEREFORE-, premises considered, the Court finds accused Armando Vidar @ "Ricky", Norberto Butalon, and Sonny Marbella @ "Spike" guilty beyond reasonable doubt of the crime of Robbery with Homicide, defined and penalized under Article 294 of the Revised Penal Code with the aggravating circumstance of treachery, and applying the provision of Art. 63, par. 1 of the Revised Penal Code, in relation to Article 294 par. 1 of the Revised Penal Code, the Court hereby sentences each one of them to suffer the maximum penalty of DEATH and to pay jointly and severally, the heirs of the victim the amount of P50,000.00 as civil indemnity and the further sum of P5,500.00 as actual damages, the sum of P50,000.00 as moral damages, the amount of P3,336,768.00 as unearned income and the amount of P50,000.00 as exemplary damages without subsidiary imprisonment in case of insolvency and to pay the costs.

The Clerk of Court is hereby ordered to transmit the records of this case to the Honorable Supreme Court for automatic review, and to prepare the Mittimus immediately.

The Warden of the Bureau of Jail Management and Penology (BJMP) Sorsogon City and/or Legaspi City is hereby ordered to deliver the accused to the National Penitentiary, Muntinlupa City, with proper escort and security immediately.

SO ORDERED.

Ruling of the Court of Appeals

On appeal, petitioners raised the following errors:

I

The Honorable Court a quo erred in finding the accused-appellants guilty of the crime of robbery with homicide despite the insufficiency of evidence for the prosecution to support the same.

II

The Honorable Court a quo erred in not finding that robbery and homicide were committed in furtherance of rebellion as admitted both by the prosecution and the defense witnesses that the victim was killed by reason of his being a member of the Philippine Army and in the performance of his duty and the assailants are members of the New People's Army (NPA) of which the accused- appellants are also members even up to the time of their arrest.

On December 18, 2006, the Court of Appeals (CA) rendered its Decision[4] finding the appeal to be unmeritorious. The appellate court gave credence to the eyewitnesses' account of the victim's death and the identity of herein petitioners.

Accordingly, the CA affirmed the findings of the trial court but modified the penalty imposed from Death to reclusion perpetua. The decretal portion of the decision reads:

WHEREFORE, the judgment of the Regional Trial Court of Sorsogon City, Branch 52, dated September 2, 2004 convicting the accused-appellants ARMANDO VIDAR alias "RICKY", NORBERTO BUTALON, SONNY MARBELLA alias "SPIKE" of the crime of Robbery with Homicide is affirmed. Considering, however, the repeal of R.A 7659 with the passage of Republic Act No. 9346 on June 24, 2006 prohibiting the imposition of the death penalty, in lieu of the trial court's imposition of the death penalty, each of the accused-appellants is hereby sentenced to suffer reclusion perpetua. They are further directed to indemnify the heirs of the victim the amount of P50, 000.00 as civil indemnity, P50,000.00 as moral damages, P50,000.00 as exemplary damages, P5,500.00 as actual damages and P2,224,512.00 for the victim's loss of earning capacity.

SO ORDERED.[5]

Hence, this petition.

On August 8, 2007, we issued a Resolution[6] treating the instant petition as petitioners' Supplemental Brief and notified the Office of the Solicitor General (OSG) that it may file a supplemental brief within 30 days from notice thereof, if it so desires. The OSG filed a Manifestation[7] (in lieu of Supplemental Brief) that it had already exhaustively argued all the issues relevant to the case in its Appellee's Brief[8] dated October 17, 2005.

Petitioners' Arguments

Petitioners contend that the appellate court erred in affirming the decision of the trial court despite the absence of proof adduced before the court below establishing beyond reasonable doubt that they committed the crime of

robbery with homicide. They maintain that the delay of almost a year in filing formal charges against them cast serious doubt on the intention and motive of the complainant. They aver that while the incident took place on April 30, 2001, formal charges against them were filed only in February 2002.

Respondent's Arguments

In refuting petitioners' contention, the OSG representing the respondent, reiterated the ruling of the court a quo and sought the affirmation of the assailed decision.

Our Ruling

Petitioners' arguments are bereft of merit. The delay did not greatly weaken the credibility of the testimonies of the prosecution witnesses. In the light of the circumstances obtaining in the case at bar, we believe that the delay in reporting to the police authorities the attendant facts of the crime for which the petitioners have been charged is consistent with normal human behavior considering that after a tragic incident, the last thing that the bereaved would want is to provoke further reprisals from the perpetrators of the felonious act. Although there is a natural tendency to seek the ends of justice for the treacherous killing of a dearly departed, personal safety takes priority as dictated by our culture. Moreover, considering private complainant's honest belief that petitioners are known to be members of the NPA, the fear of reprisal from them was ever present which caused her momentary silence. After all, delay in reporting the occurrence of a crime or other unusual event in rural areas is well known.[9] Others reveal the perpetrator of the crime only after the lapse of one year or so to make sure that the possibility of a threat to his life or to his loved ones is already diminished if not totally avoided. In *People v. Gornes*[10] we held that:

It is true that the charge against the appellant was initiated only three and a half years after the commission of the crime. However, the fact of delay alone does not work against the witness.

Thus, the fact of delay attributed to the prosecution witnesses cannot be taken against them.[11] What is important is that their testimonies regarding the incident bear the earmarks of truth and dependability.

One thing which bolsters the prosecution witnesses' credibility is the fact that they had no motive to prevaricate against the petitioners. They were not actuated by improper motive to fabricate the facts and to foist a very serious offense against them. Where there is no evidence, as in this case, to indicate that the prosecution witnesses were actuated by improper motive, the presumption is that they were not so actuated and that their testimonies are entitled to full faith and credit.[12] For personal motive on the part of a witness to testify against the accused to be appreciated as showing bias, its presence should be supported by satisfactory proof.[13] Aside from their bare allegation, petitioners miserably failed in this regard. On the contrary, we are not prepared to disbelieve the prosecution witnesses' testimonies on their vital points substantiating the circumstances of time and place of the offense charged against petitioners.

Petitioners likewise contend that their identification by the prosecution witnesses was attended with irregularity considering that they were identified merely from among the four photographs presented at Camp Escudero. They posit that this manner of identification provides an incredible suggestive procedure.

We beg to disagree.

In ascertaining whether an out-of-court identification is positive or derivative, the Court has adopted the totality of circumstances test wherein the following factors are taken into consideration: 1) the witness's opportunity to view the criminal at the time of the crime; 2) the witness's 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.[14]

We have scrutinized with great caution the witnesses' manner of identifying petitioners vis-a-vis the foregoing factors and we discern nothing irregular that would result in an erroneous identification.

At the outset, it must be stressed that the prosecution witnesses had an unobstructed view of the petitioners' appearance who were not donning masks to hide their faces when the latter barged inside the house. There is no indication that darkness prevailed inside the house so as to have an obscure view at the time. They even testified that one of the petitioners even poked a gun at them while the others were ransacking the house. Thus even for a while, there was a frontal confrontation between petitioners and the witnesses, giving the latter an opportunity to take a good look at petitioners. Nothing in the records allows the presence of any distraction that would have disrupted the witnesses' attention during the occurrence of the incident. Niña even described to the policemen the physical appearance of petitioners though no cartographic sketch was presented.[15] Experience dictates, precisely because of the unusual acts of violence committed right before witnesses' eyes, that they remember with a high degree of reliability the identity of criminals.[16] Though a considerable length of time had elapsed, the witnesses never wavered in their identification of petitioners. They cannot forget their faces.

It is worth mentioning also that the identification of petitioners was effectively admitted when petitioners failed to dispute the same before the lower courts. The in-court identification of the petitioners later on dispels any doubt as to the correctness of their identities. As we held in *People v. Rivera*: [17]

Even assuming *arguendo* that the appellant Alfonso Rivera's out-of-court identification was tainted with irregularity, his subsequent identification in court cured any flaw that may have attended it. Without hesitation, the two prosecution witnesses, Renato Losaria and Juanito Baylon identified the appellant as one of the assailants. In *People v. Timon*, the accused were identified through a show-up. The accused assailed the process of identification because no other suspect was presented in a police line-up. We ruled that a police line-up is not essential in identification and upheld the identification of the accused through a show-up. We also held that even assuming *arguendo* that the out-of-court identification was defective, the defect was cured by the subsequent positive identification in court for the inadmissibility of a police line-up identification x x x should not necessarily foreclose the admissibility of an independent in-court identification.

Moreover, the burden is on petitioners to prove that their mug shot identification was unduly suggestive. There is no evidence that the authorities had supplied or even suggested to the witnesses that petitioners were the suspected gunmen. We, therefore, fail to see any flaw that would invalidate the eyewitnesses' identification. As aptly observed by the CA:

Both Florecita Dioneda and Niña Elemanco gave a credible eyewitness' account of the victim's x x x death [by gunshots] in the hands of accused-appellant. Their testimony [sic] giving details of a startling and shocking incident that cannot easily be fabricated deserves credence and full probative weight for it indicates sincerity and truthfulness in the narration of events. Both of these witnesses had a good look at the victim's assailants, who did not at any time during the incident attempt to conceal their faces. Accused-appellant MARBELLA even stood less [than] a meter from Florecita Dioneda as he pointed a gun at her while another accused-appellant even [etched] upon her a distinct impression of his baldness as repeatedly mentioned by her during her testimony. As there is nothing to indicate that these two principal witnesses were moved by improper motives, their positive declarations on the witness stand deserve full faith and credit.[18]

The fact that the prosecution witnesses are related to the victim will not necessarily taint their testimonies. The weight of testimony of witnesses is neither impaired nor in any way affected by their relationship to the victim when there is no showing of improper motive on their part.[19] Relationship per se of a witness with the victim of the crime does not necessarily mean that the witness is biased.[20] These prosecution witnesses are the most

aggrieved parties, being the victim's widow and sister. Thus, their motive of putting the killers behind bars cannot be considered improper.[21] It would be unnatural for a relative who is interested in avenging the crime to implicate persons other than the real culprit lest the guilty go unpunished.[22]

Deeply entrenched in our jurisprudence is the rule that the assessment of the credibility of witnesses is a domain best left to the trial court judge because of his unique opportunity to observe their deportment and demeanor on the witness stand; a vantage point denied appellate courts - and when his findings have been affirmed by the Court of Appeals, these are generally binding and conclusive upon this Court.[23]

Significantly, in the pleadings filed before the trial court and in the appellate court, petitioners were steadfast in their position that the crime was committed in furtherance of rebellion, obviously to escape criminal liability for the present charge. This is judicial admission that they indeed committed the crime. A judicial admission conclusively binds the party making it. He cannot thereafter take a position contradictory to or inconsistent with his pleading. Acts or facts admitted do not require proof and cannot be contradicted unless it is shown that the admission was made through palpable mistake or that no such admission was made.[24] Moreover, when a party adopts a certain theory in the court below, he is not allowed to change his theory on appeal, for to allow him to do so would not only be unfair to the other party but would also be offensive to the basic rules of fair play, justice and due process.[25]

Treachery was also duly proven. The deadly and successive actions of the petitioners did not allow the victim any opportunity to defend himself. The victim was innocently taking a bath totally unaware of the planned attack against him. Or while he may have realized a possible danger to his person, the attack was executed in such a manner as to make defense, not to say counter attack, impossible. The suddenness of the assault, without the slightest provocation from him who was unarmed and with nary an opportunity to repel the aggression or defend himself, ineluctably qualified the crime with *alevosia*. [26]

The twin defenses of denial and alibi raised by petitioners must necessarily fail in view of the positive identification made by the prosecution witnesses. Alibi and denial are inherently weak defenses and must be brushed aside when the prosecution has sufficiently and positively ascertained the identity of the accused.[27] And it is only axiomatic that positive testimony prevails over negative testimony.[28]

The testimonies of the prosecution witnesses thus established beyond reasonable doubt the elements of robbery with homicide, namely: 1) the taking of personal property was committed with violence or intimidation against persons; 2) the property taken belongs to another; 3) the taking was done with *animo lucrandi*; and 4) by reason of the robbery or on the occasion thereof, the crime of homicide which is therein used in a generic sense, was committed.[29]

As to damages, we find the amounts awarded by the trial court as modified by the CA with respect to the amount of the loss of earning capacity to have been duly substantiated and warranted. We see no cogent reason to reverse the same.

Finally, we take note that petitioner Butalon died before final judgment. According to the written report of the Penal Superintendent,[30] Butalon died at the New Bilibid Prison Hospital on October 21, 2004. Thus, consistent with our ruling in *People v. Bayotas*[31] that the death of an accused pending appeal of his conviction extinguishes his criminal liability as well as the civil liability based solely thereon, we declare the dismissal of the petition of the late Norberto Butalon.

WHEREFORE, the petition for review is DENIED. The challenged Decision of the Court of Appeals in CA-G.R. CR H.C. No. 00554 dated December 18, 2006 is AFFIRMED with MODIFICATION that the petition of Norberto

Butalon is dismissed, his criminal and civil liability having been extinguished by reason of his death.

SO ORDERED.

Carpio (Chairperson), Corona[*], Brion, and Perez, JJ., concur.

[*] In lieu of Associate Justice Roberto A. Abad who is on leave per Special Order No. 812 dated January 4, 2010.

[1] *People v. Musa*, G.R. No. 170472, July 3, 2009.

[2] Records, p. i.

[3] Records, pp. 113-119, penned by Judge Honesto A. Villamor.

[4] CA rollo, pp. 107-122; penned by Associate Justice Rosmari D. Carandang and concurred in by Associate Justices Renato C. Dacudao and Estela M. Perlas-Bernabe.

[5] Id. at 53.

[6] Rollo, p. 89.

[7] Id. at 90-91.

[8] CA rollo, pp. 78-102.

[9] *People v. Belon*, G.R. No. 87759, February 26, 1991, 194 SCRA 447, 457.

[10] G.R. No. 104869, February 23, 1994, 230 SCRA 270, 279.

[11] *People v. Carizo*, G.R. No. 96551, July 6, 1994, 233 SCRA 687, 700.

[12] *People v. Simon*, 473 Phil. 336, 365 (2004).

[13] *People v. Foncardes*, 466 Phil. 992, 1005 (2004).

[14] *People v. Sinco*, 408 Phil. 1, 13 (2001).

[15] TSN, November 26, 2002, p. 9.

[16] *People v. Foncardes*, supra note 13 at 1006.

[17] 458 Phil. 856, 876-877 (2003).

[18] Rollo, p. 49.

[19] *Velasco v. People*, G.R. No. 166479, February 28, 2006, 483 SCRA 649, 668.

[20] *Tadeja v. People*, G.R. No. 145336, July 21, 2006, 496 SCRA 157, 165.

[21] *People v. Navales*, 334 Phil. 521, 541 (1997).

[22] *People v. Dulanas*, G.R. No. 159058, May 3, 2006, 489 SCRA 58, 76.

[23] *Heirs of Florentino Remetio v. Villareal*, G.R. No. 132357, May 31, 2006, 490 SCRA 43, 47.

[24] *Heirs of Pedro Clemena y Zurbano v. Heirs of Irene B. Bien*, G.R. No. 155508, September 11, 2006, 501 SCRA 405, 414-415.

[25] Naval v. Court of Appeals, G.R. No. 167412, February 22, 2006, 483 SCRA 102, 109.

[26] People v. Pallarco, 351 Phil. 391, 410 (1998).

[27] People v. Torres, G.R No. 176262, September 11, 2007, 532 SCRA 654, 665.

[28] People v. Corpuz, G.R No. 168101, February 13, 2006, 482 SCRA 435, 450.

[29] People v. Lara, G. R No. 171449, October 23, 2006, 505 SCRA 137, 154.

[30] CA rollo, p. 126.

[31] G.R No. 102007, September 2, 1994, 236 SCRA 239, 241.

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