PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ABDUL AMINOLA Y OMAR AND MIKE MAITIMBANG Y ABUBAKAR, ACCUSED-APPELLANTS.

G.R. No. 178062. September 08, 2010

Ponente: VELASCO JR., J.

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VELASCO JR., J.:

This is an appeal from the February 12, 2007 Decision of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 01300 entitled People of the Philippines v. Abdul Aminola y Omar and Mike Maitimbang y Abubakar, which affirmed the January 21, 2004 Decision in Criminal Case Nos. 116595-H and 116596 of the Regional Trial Court (RTC), Branch 156 in Pasig City. The RTC found accused-appellants guilty of Robbery with Homicide and sentenced them to reclusion perpetua.

The Facts

In Criminal Case No. 116595-H, an Information charged accused-appellants as follows:

> On or about August 31, 1999 in Taguig, Metro Manila and within the jurisdiction of this Honorable Court, the accused, conspiring and confederating together and all of them mutually helping and aiding one another, armed with an unlicensed gun, with intent to gain, did then and there willfully, unlawfully and feloniously take, rob and divest one Nestor Aranas Gabuya cash amounting to P150,000.00, placed inside the bag of the said victim which was forcibly taken by the respondents, necklace worth P35,000.00, Timex watch worth P4,000.00 and a licensed 9 mm. Bernardelli gun with serial number 302617-50 worth P45,000.00; that by reason or on the occasion of the crime of robbery, accused, Datu Ban Ampatuan y Panaguilan, Abdul Aminola y Omar, a.k.a. "Roy," Alimudin Laminda y Macacua, a.k.a. "Modin," Abdulan Sandaton y Sangcopan, a.k.a. "Kulem" and Mike Batimbang y Abubakar, a.k.a. "Nuke" with intent to kill, did then and there willfully, unlawfully and feloniously attack, assault and shot Nestor Aranas Gabuya with the gun into the different parts of his body, thereby inflicting upon him mortal gunshot wounds which directly caused his death.[1]

In Criminal Case No. 116596, an Information charged accused-appellant Abdul Aminola y Omar with illegal possession of firearms allegedly as follows:

> On or about August 31, 1999 in Taguig, Metro Manila and within the jurisdiction of this Honorable Court, the accused, being then a private person, did then and there willfully, unlawfully and feloniously have in his possession and under his custody and control one caliber (1) magazine loaded with two (2) live ammos, without first securing the necessary license or permit from the proper authorities.[2]

During their arraignment, accused-appellants gave a negative plea. Thereafter, the two cases were jointly tried.

Version of the Prosecution

At the trial, the prosecution presented the following witnesses: Police Major Rolando Migano, Ballistician III Ireneo S. Ordiano, and Jesus Oliva, the eyewitness.

In the afternoon of August 31, 1999, at around five, Nestor Gabuya closed shop at his motorcycle and bicycle spare parts store located in Upper Bicutan, Taguig. He then headed home on his bike. Unbeknownst to him, accused-appellant Abdul Aminola and accused Alimudin Laminda were observing him from a nearby basketball court. Aminola proceeded to follow Gabuya. Upon catching up with Gabuya, Aminola put his arms around Gabuya and wrestled for the bag Gabuya was carrying. Gabuya refused to let go of his bag, whereupon Aminola pulled out a gun and shot him. Gabuya fell to the ground but still resisted, prompting Aminola to take another shot.[3]

Accused-appellant Mike Maitimbang then approached and took something from the fallen Gabuya. Maitimbang shot Gabuya behind and fled towards the direction of eyewitness Oliva. Joel, Gabuya's caretaker, gave chase but was fired upon by Maitimbang.[4] Oliva testified seeing the incident while he was on Genera Valdez St. in Purok V, Upper Bicutan.[5]

Regina, Gabuya's wife, reported the incident that same afternoon. Based on her information, Major Migano formed a team to investigate the crime.[6]

Later that evening, an informant known as "Abdul" told the police that he witnessed what had happened to Gabuya and could tell them where the suspects could be found. True enough, Abdul led Major Migano and his men. A blocking force was organized while Col. Bernido formed a team to make the arrests on the suspects.

In the evening of September 1, 1999, Major Migano's team once again went to the hideout, where Abdul identified four of Gabuya's assailants. One of them, Aminola, was found in possession of an unlicensed .45 caliber gun with one (1) magazine and two (2) ammunitions.[7]

The four men arrested, identified as Aminola, Laminda, Datu Ban Ampatuan, and Abdulan Sandaton, were then brought to the Criminal Investigation Division at Camp Crame, Quezon City for further investigation.[8] On September 2, 1999, Maitimbang was also arrested.

The result of the post-mortem examination of Gabuya, conducted by Dr. David, showed that he had four (4) gunshot wounds with three (3) entry wounds and one (1) exit wound.[9] Two (2) slugs were recovered from the Gabuya's body, one from the brain and the other from his lungs.[10]

Version of the Defense

The defense offered the testimonies of accused-appellant Maitimbang, Laminda, Sandaton, accused-appellant Aminola, and their witnesses Mymona Quirod and Senior Police Officer 2 (SPO2) Bero Saud Lukman.

Maitimbang testified that he was arrested on September 2, 1999 after arriving home from work due to a grenade found in his possession. At the police precinct, he was not informed that his arrest was made in connection with the death of Gabuya. It was only during the inquest, according to him, that he saw his fellow accused for the first time. He further averred that Gabuya's widow pinpointed him as one of the suspects when she learned he was a Muslim. He claimed his name was only included and superimposed on the list of suspects.[11]

Laminda, for his part, narrated that he was nabbed together with his cousin Sandaton in the early morning of September 1, 1999 at their house on Rogan St., Maharlika Village, Taguig. He disavowed any knowledge of the reason for their arrest and claimed that the arresting police officers had neither a warrant of arrest nor a search warrant. He likewise denied acting as a lookout in the robbery resulting in the death of Gabuya. He attested that he was a tricycle driver, and that on August 31, 1999, he was ferrying passengers in his usual route of Maharlika-Triumph-Signal. He denied having fellow accused Ampatuan as a passenger and only came to know of Aminola because the latter was also a tricycle driver.[12]

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Mymona Quirod corroborated Laminda's story. On the witness stand, Quirod testified that she boarded Lamida's tricycle at around 5:10 in the afternoon of August 31, 1999 and got off at exactly six in the evening. She was in Davao when she heard that Laminda had been implicated in Gabuya's death and felt compelled to come back to help Laminda who she believed was innocent.[13]

Sandaton, on the other hand, narrated that it was only during the inquest proceedings that he learned of the criminal charge against him. He denied knowing Oliva and being a lookout while Gabuya was being robbed and killed.[14]

Aminola testified that he was at home on September 1, 1999 when policemen suddenly entered and arrested him and brought him to the police station in Maharlika Village, Taguig. He was brought there together with Ampatuan, Sandaton and Laminda. He denied knowing Oliva but admitted knowing Laminda and Ampatuan as acquaintances.[15]

SPO2 Lukman was presented to establish Aminola's whereabouts at about the time of Gabuya's killing. According to SPO2 Lukman, at around half past five in the afternoon of August 31, 1999, he was talking to Aminola outside the latter's house until six in the evening.[16]

Instead of testifying for his defense, Ampatuan filed a Demurrer to Evidence.

The Ruling of the Trial Court

Finding no proof of Ampatuan's involvement in the robbery with homicide, the trial court granted his Demurrer to Evidence.

After trial, the RTC found accused-appellants Aminola and Maitimbang guilty of robbery with homicide, but acquitted accused Sandaton and Laminda. The trial court, however, cleared Aminola of the crime charged in Criminal Case No. 116596.

The fallo of the RTC's Joint Decision dated January 21, 2004 reads:

> WHEREFORE, premises considered, the Court find on [sic] Criminal Case No. 116595 accused Abdul Aminola y Omar and Mike Maitimbang y Abubakar GUILTY beyond reasonable doubt of the crime of "Robbery with Homicide" defined and punished under par. 1 of Article 294 of the Revised Penal Code with the aggravating circumstance of use of unlicensed firearm, applying Section 1 of Republic Act 8294 [July 6, 1997] they are hereby sentenced to suffer the penalty of Death while accused Alimudin Laminda y Macacua and Abdulan Sandaton y Sangcopan are hereby ACQUITTED of the charge for failure of the prosecution to present the quantum of proof mandated by law to establish conspiracy in the killing of Nestor Aranas Gabuya and are further ordered immediately released from confinement unless held for some other lawful cause/s.
>
> The accused Abdul Aminola y Omar and Mike Maitimbang y Abubakar are likewise sentenced, separately:
>
> a) To indemnify the heirs of NESTOR ARANAS GABUYA in the amount of Fifty Thousand (P50,000.00) Pesos as death indemnity.
> b) The amount of Fifty Thousand (P50,000.00) Pesos each as moral damages.
> c) The amount of Thirty Thousand (P30,000.00) each as exemplary damages.
>
> In Criminal Case No. 116596, accused Abdul Aminola y Omar is ACQUITTED.
>
> SO ORDERED.[17]

As before the RTC, accused-appellant Aminola on appeal put up the defense of alibi, maintaining that he could not have committed the crime for he was at home talking with SPO2 Lukman at the time of the incident. Aminola likewise questioned his warrantless arrest. On the other hand, accused-appellant Maitimbang reiterated his

innocence, claiming that there was no reason for his arrest other than the fact that a grenade was found in his possession. He also asserted that he was merely included in the list of suspects with his name superimposed on the list.

The Ruling of the Appellate Court

The CA affirmed the trial court's decision but reduced the penalty imposed to reclusion perpetua in view of the abolition of the death penalty.[18]

Disagreeing with the appellate court's decision, accused-appellants timely filed their Notice of Appeal with this Court.

On August 8, 2007 , the Court required the parties to submit supplemental briefs if they so desired. The People of the Philippines, thru the Office of the Solicitor General (OSG), informed the Court that it is submitting the case for decision based on records and pleadings previously filed. Accused-appellants, on the other hand, averred in their Supplemental Brief that they were erroneously convicted despite the existence of reasonable doubt.

The Issue

> WHETHER THE COURT OF APPEALS ERRED IN FINDING ACCUSED-APPELLANTS GUILTY BEYOND REASONABLE DOUBT.

Insisting on his innocence, accused-appellant Maitimbang maintains that he should have been identified as a suspect at the onset of the investigation if he were really one of the perpetrators.

Accused-appellant Aminola, on the other hand, claims that the appellate court erroneously disregarded his alibi, a defense indisputably corroborated by SPO2 Lukman.

Accused-appellants question the legality of their warrantless arrest, arguing that there was no hot pursuit to speak of, since there was no indication that they were committing or attempting to commit an offense in the presence of the arresting officers or that they had just committed an offense. As claimed, a considerable period of time had elapsed between their arrest and the commission of the crime, thus necessitating a warrant of arrest.

The OSG counters that what transpired were hot pursuit arrests, for the arresting team's investigation and the data gathered from informant Abdul were sufficient reasonable grounds to believe that accused-appellants indeed robbed and killed Gabuya. The fact that Aminola was arrested a day after the incident while Maitimbang was arrested two days later would bring the arrests within the purview of hot pursuit arrests, made as they were within a brief interval between the actual commission of the crime and the arrests effected.

Our Ruling

We affirm accused-appellants' conviction.

Elements of the Crime

The following elements must be established for a conviction in the special complex crime of robbery with homicide:

- The taking of personal property is committed with violence or intimidation against persons;
- The property taken belongs to another;
- The taking is animo lucrandi; and
- By reason of the robbery or on the occasion thereof, homicide is committed.[19]

Essential for conviction of robbery with homicide is proof of a direct relation, an intimate connection between the robbery and the killing, whether the latter be prior or subsequent to the former or whether both crimes are committed at the same time.[20]

The prosecution was able to establish that accused-appellants committed robbery with homicide through the totality of their evidence. The first three elements were established when Oliva testified that he saw, and positively identified, accused-appellants taking Gabuya's property by force and both shooting Gabuya. Gabuya's death resulting from their attack proves the last element of the complex crime as duly confirmed by the post-mortem report.

Defense of Alibi Unavailing

Accused-appellants cannot avoid liability by way of their defenses. Alibi is the weakest of all defenses because it is easy to concoct and difficult to disprove.[21] To establish alibi, an accused must prove (1) that he was present at another place at the time the crime was perpetrated; and (2) that it was physically impossible for him to be at the scene of the crime. Physical impossibility "refers to the distance between the place where the accused was when the crime transpired and the place where it was committed, as well as the facility of access between the two places."[22]

The fact that Aminola's witness, i.e., SPO2 Lukman, corroborated Aminola's testimony about not being at the situs of the crime when Gabuya was robbed and killed does not, without more, serve to strengthen Aminola's alibi. As the appellate court aptly observed, SPO2 Lukman's testimony did not prove the physical impossibility for Aminola to be at the scene of the crime. SPO2 Lukman did not categorically specify the time he was with Aminola on the date of the incident. His testimony did not preclude the possibility of Aminola perpetrating the crime after their meeting. As the trial court perceptively observed:

> The time interval from Rogan Street to Bonifacio Street is just five (5) or ten (10) minutes. Such distance does not preclude the accused from being at the place of the crime at the time of its commission. Hence SPO2 Lukman's testimony could not be given more weight than prosecution witness Oliva's testimony.[23]

The defense of Maitimbang, likewise, cannot overcome the positive identification by Oliva. Under oath, Oliva testified seeing Maitimbang take Gabuya's property and shot Gabuya at the back while already prone on the ground.

Denial and alibi cannot prevail over the positive and categorical testimony of the witness[24] identifying a person as the perpetrator of the crime absent proof of ill motive. No reason or motive was given for Oliva to falsely testify against accused-appellants on such a serious crime. As often noted, the trial court is in a better position to observe the demeanor and candor of the witnesses and to decide who is telling the truth. We, thus, defer to the trial court's findings especially when duly affirmed by the appellate court.

Legality of Warrantless Arrests

The CA correctly ruled on the question of legality of the warrantless arrests of accused-appellants. A warrantless arrest is not a jurisdictional defect and any objection to it is waived when the person arrested submits to arraignment without any objection,[25] as in this case. Accused-appellants are questioning their arrest for the first time on appeal and are, therefore, deemed to have waived their right to the constitutional protection against illegal arrests and searches.[26]

Penalty

The Revised Penal Code provides:

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> 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:
>
> 1. The penalty of reclusion perpetua to death, when by reason or on the occasion of the robbery, the crime of homicide shall have been committed or when the robbery shall have been accompanied by rape or intentional mutilation or arson. x x x

The RTC sentenced both accused-appellants to death. But consonant to the abolition of death penalty under Republic Act No. (RA) 9346,[27] the CA reduced the penalty to reclusion perpetua. While the penalty reduction was legally correct, the CA omitted to include in the imposition that both accused-appellants shall be ineligible for parole. Section 2 of RA 9346 provides that sentences "which will be reduced to reclusion perpetua by reason of the law, shall not be eligible for parole." Thus, the sentence handed down by the CA must be accordingly modified.

Anent accused-appellants' pecuniary liability, we modify the damages awarded by the lower court. Civil indemnity of PhP 50,000 is given without need of proof other than the fact of death as a result of the crime and proof of the accused's responsibility for it.[28] If, however, the commission of robbery with homicide is attended by a qualifying aggravating circumstance, as here, that requires the imposition of the death penalty (such as the use of an unlicensed firearm), the civil indemnity for the victim shall be PhP 75,000.[29] Moral damages awarded in the amount of PhP 50,000 must also be increased to PhP 75,000 pursuant to current jurisprudence.[30]

The exemplary damages of PhP 30,000 was correctly awarded, since under Article 2230 of the Civil Code, exemplary damages may be imposed when the crime was committed with one or more aggravating circumstances, as in the instant case.

WHEREFORE, the appeal is DENIED. The CA Decision in CA-G.R. CR-H.C. No. 01300 finding accused-appellants guilty beyond reasonable doubt of robbery with homicide is AFFIRMED, with MODIFICATIONS that accused-appellants are to suffer the penalty of reclusion perpetua without eligibility for parole, and each of them is ordered to pay the increased amount of PhP 75,000 as civil indemnity and PhP 75,000 as moral damages, in addition to PhP 30,000 as exemplary damages.

SO ORDERED.

Corona, C.J., (Chairperson), Nachura,[*] Leonardo-De Castro, and Perez, JJ., concur.

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[*] Additional member per September 6, 2010 raffle.

[1] CA rollo, pp. 12-13.

[2] Id. at 15.

[3] Rollo, pp. 7-8.

[4] Id.

[5] CA rollo, p. 28.

[6] Rollo, p. 8.

[7] Id. at 9.

[8] Id.

[9] Id. at 55.

[10] Id. at 9.

[11] Id. at 56.

[12] Id. at 57.

[13] Id.

[14] Id.

[15] Id.

[16] Id.

[17] CA rollo, p. 38. Penned by Judge Alex L. Quiroz.

[18] Rollo, p. 16. The Decision was penned by Associate Justice Lucenito N. Tagle and concurred in by Associate Justices Conrado M. Vasquez, Jr. and Mariano C. Del Castillo (now a member of this Court).

[19] People v. Esoy, G.R. No. 185849, April 7, 2010.

[20] People v. Quemeggen, G.R. No. 178205, July 27, 2009, 594 SCRA 94, 104.

[21] People v. Guillera, G.R. No. 175829, March 20, 2009, 582 SCRA 161, 170; citing People v. Bonbon, G.R. No. 143085, March 10, 2004, 425 SCRA 178, 187 and People v. Caraang, G.R. Nos. 148424-27, December 11, 2003, 418 SCRA 321, 349.

[22] People v. Esoy, supra note 19.

[23] CA rollo, p. 35.

[24] People v. Bulasag, G.R. No. 172869, July 28, 2008, 560 SCRA 245, 253.

[25] People v. Del Rosario, G.R. No. 127755, April 14, 1999, 305 SCRA 740, 760-761.

[26] People v. Rivera, G.R. No. 177741, August 27, 2009, 597 SCRA 299, 305.

[27] "An Act Prohibiting the Imposition of Death Penalty in the Philippines," which took effect on June 30, 2006.

[28] People v. Berondo, Jr., G.R. No. 177827, March 30, 2009, 582 SCRA 547, 554; citing People v. Whisenhunt, G.R. No. 123819, November 14, 2001, 368 SCRA 586, 610.

[29] People v. Villanueva, G.R. No. 187152, July 22, 2009, 593 SCRA 523, 548; citing People v. Sambrano, G.R. No. 143708, February 24, 2003, 398 SCRA 106, 117.

[30] People v. Villanueva, supra note 29.

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