

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RUDY BUDUHAN Y BULLAN AND ROBERT BUDUHAN Y BULLAN, DEFENDANTS-APPELLANTS.**

*G.R. No. 178196. August 06, 2008*

Ponente: CHICO-NAZARIO, J.

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**CHICO-NAZARIO, J.:**

Before Us is a review of the Decision[1] of the Court of Appeals dated 29 December 2006 in CA-G.R. CR-HC No. 01940, which affirmed with modifications the Decision[2] dated 24 July 2003 of the Regional Trial Court (RTC) of Maddela, Quirino, Branch 38, in Criminal Case No. 38-18, finding accused-appellants Robert Buduhan y Bullan and Rudy Buduhan y Bullan guilty of the special complex crime of robbery with homicide with respect to the deceased Larry Erese, and of the crime of homicide with respect to the deceased Romualde Almeron. The Court of Appeals ordered the payment of moral damages to the heirs of said victims, in addition to the award already given by the trial court.

On 26 August 1998, an Information[3] was filed against Robert Buduhan, Rudy Buduhan, Boyet Guinhicna, Boyet Ginyang and 3 John Does before the RTC of Maddela, Quirino, for the crime of Robbery with Homicide and Frustrated Homicide. Docketed as Criminal Case No. 38-18, the accusatory portion of the information provides:

That on or about 10:40 o'clock in the evening of July 24, 1998 in Poblacion Norte, Municipality of Maddela, Province of Quirino, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, four of them are armed and after first conspiring, confederating and mutually helping one another and with force and violence did then and there willfully, unlawfully and feloniously rob ROMUALDE ALMERON of his wallet and wrist watch and LARRY ERESE of his wrist watch to the damage and prejudice of the said ROMUALDE ALMERON and LARRY ERESE;

That on the occasion of the Robbery, the said accused, armed with firearms of different caliber and after first conspiring, confederating and mutually helping one another did then and there willfully, unlawfully and feloniously, shoot and fire upon ROMUALDE ALMERON, LARRY ERESE and ORLANDO PASCUA resulting to their instanteneous (sic) death and the injuries to the persons of FERNANDO PERA and GILBERT CORTEZ.

On 20 October 1998, the accused filed a Motion to Quash[4] the above information, alleging that the court did not legally acquire jurisdiction over their persons. The accused contended they were neither caught in flagrante delicto, nor did the police have personal knowledge of the commission of the offense at the time when their warrantless arrests were effected.[5]

In an Order dated 25 August 1999, the RTC denied the above motion on the ground that the assertion of lack of personal knowledge on the part of the arresting officers regarding the commission of the crime is a matter of defense, which should be properly taken up during the trial.[6]

When arraigned on 12 January 2000, the accused Rudy Buduhan, Robert Buduhan and Boyet Ginyang, with the

assistance of their counsel de oficio, entered their pleas of "Not Guilty" to the crime charged.[7] With respect to accused Boy Guinhicna, counsel for the accused informed the trial court of his death and thus moved for the dismissal of the charges against him.[8]

On the same date, the pre-trial conference was terminated and both parties agreed on the following stipulation of facts, namely:

- That the incident transpired at about 10:40 in the evening of July 24, 1998;
- That the incident happened at Poblacion Norte, Maddela, Quirino;
- That no firearm has been confiscated from any of the accused.[9]

Upon the submission of accused Boy Guinhicna's Certificate of Death,[10] the RTC dismissed the case against him on 14 February 2000.[11] Thereafter, trial of the case ensued.

The prosecution presented the following witnesses: (1) Cherry Rose Salazar, an employee of the establishment where the crime was committed[12]; (2) Senior Police Officer 1 (SPO1) Leo Saquing, a police officer at the Maddela Police Station who investigated the crime committed[13]; (3) Dr. Fernando T. Melegrito, the medical examiner who conducted the autopsies on the bodies of the victims[14]; (4) Myrna Almeron, the widow of the victim Romualde Almeron[15]; and (5) Laurentino Erese, Sr., the father of the victim Larry Erese.[16]

The defense, on the other hand, presented: (1) appellant Robert Buduhan[17]; (2) accused Boyet Ginyang[18]; (3) Police Inspector Ma. Leonora Chua-Camarao, a Forensic Chemist of the Philippine National Police (PNP) Crime Laboratory at Camp Crame, Quezon City[19]; (4) appellant Rudy Buduhan[20]; and (5) Reynaldo Gumiho, an eyewitness who was allegedly present at the scene of the crime shortly before the incident in question occurred.[21]

The People's version of the incident as narrated by its principal witness, Cherry Rose Salazar (Cherry Rose), is as follows:

On 24 July 1998, Cherry Rose was working as a guest relations officer at the RML Canteen, a beerhouse and a videoke bar in Maddela, Quirino.[22] At about 9:00 to 10:00 p.m., there were only two groups of men inside the beerhouse.[23] The group that went there first was that of the appellants,[24] which was composed of Robert Buduhan, who was wearing a white T-shirt marked Giordano,[25] Rudy Buduhan, who was wearing a red T-shirt,[26] a man wearing a blue T-shirt,[27] and another man wearing a blue T-shirt with a black jacket.[28] The second group was composed of Larry Erese and his companions Gilbert Cortez (alias Abe) and Fernando Pera (alias Nanding).

At 10:40 p.m., while Cherry Rose was entertaining the group of Larry Erese, Robert approached them and poked a gun at Larry.[29] Immediately, the man wearing a blue T-shirt likewise approached Cherry Rose's Manager Romualde Almeron (alias Eddie), who was seated at the counter.[30] The man in blue poked a gun at Romualde and announced a hold-up.[31] Larry then handed over his wristwatch to Robert. Instantaneously, all four men from Robert's group fired their guns at Larry and Romualde, which caused them to fall down.[32] Abe and Nanding ran out of the RML Canteen when the shooting occurred, and Cherry Rose hid below the table.[33]

SPO1 Leo T. Saquing[34] testified that on 24 July 1998, at 11:00 p.m., he and SPO4 Alex M. Gumayagay were detailed as duty investigators at the Maddela Police Station when Eddie Ancheta, a fireman, reported to them a shooting incident at the RML Canteen in Barangay Poblacion Norte, Maddela, Quirino. SPO1 Saquing and SPO4 Gumayagay then proceeded to the said place. About 50 meters from the scene of the crime, they encountered four male individuals who were running away therefrom.[35] The policemen immediately halted the men and asked

them where they came from. When they could not respond properly and gave different answers, the policemen apprehended them and brought them to the Maddela Police Station for questioning and identification.[36] Afterwards, the policemen went back to the RML Canteen to conduct an investigation therein.[37] Later that night, the witnesses[38] of the shooting incident went to the police station and they positively pointed to the four persons, later identified as Robert Buduhan, Rudy Buduhan, Boy Guinhicna and Boyet Ginyang, as the assailants in the said incident.[39]

Dr. Fernando Melegrito,[40] the Chief of Hospital at the Maddela Hospital, testified that he conducted the autopsies on the bodies of the victims Romualde Almeron, Larry Erese and Orlando Pascua.[41] With respect to Romualde, Dr. Melegrito found that the former sustained a gunshot wound 1/2 x 1/2 centimeter in diameter, one inch above the right nipple, perforating the fourth rib of the right chest, penetrating the superior aspect of the right lung, the aorta of the heart, the midportion of the left lung and exited through the back, two inches below the lower portion of the left scapular region.[42] These findings were also contained in Romualde Almeron's Autopsy Report.[43] From the nature of the wound, Dr. Melegrito concluded that the victim was near and was in front of the assailant when he was fatally shot.

As regards Larry Erese, Dr. Melegrito testified that said victim sustained a gunshot wound 1/2 x 1/2 centimeter in diameter in the sternal region of the chest, between the third left and right rib, perforating the arch of the aorta of the heart and penetrating the subcutaneous tissue of the left lower back at the level of the seventh rib, where a slug (bullet)[44] was extracted.[45] These findings were likewise contained in Larry Erese's Autopsy Report.[46]

Concerning the victim Orlando Pascua, Dr. Melegrito testified that the gunshot wound that the former sustained resulted into a massive disruption of the lung.[47] As presented in Pascua's Autopsy Report,[48] the gunshot wound was 1 x 1 inch in diameter, perforating the midportion of the fourth rib of the left chest, macerating the three-fourth (3/4) portion of the left lung, and penetrating the subcutaneous tissues of the left back at the level of the third and fourth ribs, then the fourth and fifth ribs where pellets were extracted therein.

Myrna Almeron[49] testified that as a result of the untimely death of her husband Romualde Almeron, which fact was evidenced by a Death Certificate,[50] she incurred expenses for funeral services in the amount of P38,000.00 and expenses during her husband's wake in the amount of P25,000.00. She also claimed that during the night of the shooting incident, Romualde brought with him the amount of P50,000.00 in his wallet, but the same was no longer recovered. Among these figures, however, Myrna Almeron was only able to present a receipt for the expenses for funeral services [51] and only in the amount of P26,000.00.

Laurentino Erese testified that during the wake of his deceased son, whose death was evidenced by a Death Certificate,[52] he incurred funeral expenses for Larry in the amount of P18,000.00.[53] From the wake to the first death anniversary, the total expenses were claimed to be more or less P100,000.00.[54] However, only the receipt for the above funeral services[55] was offered.

The prosecution did not present the other surviving victims in the shooting incident, namely Gilbert Cortez and Fernando Pera. The latter were fearful of reprisals from unknown individuals. No evidence was likewise adduced on their behalf. Also, the other employees who worked as guest relations officers in the RML Canteen and who likewise witnessed the incident were said to have absconded already.[56]

For the defense, appellant Robert Buduhan[57] testified that on the evening of 24 July 1998, he was at their boarding house in Poblacion, Maddela, Quirino, together with Rudy Buduhan, Boyet Ginyang, and Boy Guinhicna. The group drank one bottle of San Miguel Gin, and then went to sleep. Unknown to him and Guinhicna, Rudy and Ginyang still went out to continue their drinking sessions. While he was sleeping, Ginyang arrived and woke him up. Ginyang told him that they had to go to the beerhouse where he (Ginyang) and Rudy

had been to because something might have happened to Rudy, as there was a fight there. Robert, Ginyang and Guinhicna then proceeded to look for Rudy. On their way there, at the junction of the National Highway, they encountered some policemen who asked them where they were headed. When Robert said that they were looking for Rudy, the policemen told them to board the police vehicle and the group was given a ride. As it turned out, Robert's group was taken to the Municipal Jail of Maddela where they were detained. The policemen went out to look for Rudy and they likewise put him in jail. The following day, the policemen confiscated the shirts worn by the group. They were also taken to Santiago City where paraffin tests were conducted. On the evening of 26 July 1998, the policemen went to the jail with three ladies who were asked to identify Robert's group. The ladies, however, did not recognize Robert and his companions.

Boyot Ginyang[58] testified that on 24 July 1998, at 10:00 p.m., he and Rudy went to a beerhouse in Maddela, Quirino. After ordering some drinks and chatting, they suddenly heard gunshots from the outside. Looking towards the direction of the sound, he saw somebody fall to the ground and at that point, he and Rudy ran to get away from the place. While running towards their boarding house, Rudy was stopped by an unknown armed person in a white T-shirt. When Ginyang reached the boarding house, he roused appellant Robert and Guinhicna from their sleep and asked them to go with him and search for Rudy. Upon reaching the junction at the National Highway, they were halted by a man who asked where they were heading. After hearing their story, the man said they should wait for a vehicle that would help them look for Rudy. When the vehicle arrived, he and the others were brought to the municipal jail. Thereafter, Rudy was likewise picked up by the police and detained with the group. On the morning of 25 July 1998, three ladies were brought to the municipal jail to identify his group, but the former did not recognize them. On the morning of 26 July 1998, Ginyang and his three companions were brought to Santiago City where they were made to undergo paraffin testing. Afterwards, the group was brought back to the municipal jail in Maddela, Quirino. Ginyang also testified that the policemen took the shirts they wore on the night of 24 July 1998, but he could not remember when they did.

Police Inspector Maria Leonora Chua-Camarao[59] testified that she was the one who conducted the examination proper of the paraffin casts taken from Robert Buduhan, Rudy Buduhan, Boyot Ginyang and Boy Guinhicna. She likewise brought before the trial court the original Letter Request[60] of the Maddela Police Station for the conduct of paraffin casting; the Letter of Request[61] addressed to the Officer-in-Charge the PNP Crime Laboratory in Region 2 for the conduct of paraffin examination; and the paraffin casts of subjects Rudy, Ginyang, Guinhicna and Robert.[62] Police Inspector Chua-Camarao explained that the purpose of conducting a paraffin test was to determine the presence of gunpowder residue in the hands of a person through extraction using paraffin wax. The process involves two stages: first, the paraffin casting, in which the hands of the subject are covered with paraffin wax to extract gunpowder residue; and second, the paraffin examination per se, which refers to the actual chemical examination to determine whether or not gunpowder residue has indeed been extracted. For the second stage, the method used is the diphenyl amine test, wherein the diphenyl amine agent is poured on the paraffin casts of the subject's hands. In this test, a positive result occurs when blue specks are produced in the paraffin casts, which then indicates the presence of gunpowder residue. When no such reaction takes place, the result is negative.

The findings and conclusion on the paraffin test that Police Inspector Chua-Camarao conducted were contained in Physical Science Report No. C-25-98[63] which yielded a negative result for all the four accused. Nonetheless, the forensic chemist pointed out that the paraffin test is merely a corroborative evidence, neither proving nor disproving that a person did indeed fire a gun. The positive or negative results of the test can be influenced by certain factors, such as the wearing of gloves by the subject, perspiration of the hands, wind direction, wind velocity, humidity, climate conditions, the length of the barrel of the firearm or the open or closed trigger guard of the firearm.[64]

Appellant Rudy Buduhan testified that at past 10:00 p.m. of 24 July 1998, he and Ginyang went to a beerhouse. Shortly after ordering their drinks, they heard gunshots, and a person seated near the door fell. They then ran towards the road.[65] While running, an armed man wearing a white T-shirt held him, while Ginyang was able to get away.[66] After a while, the police arrived and they took him to the Maddela police station where he was jailed along with Robert, Ginyang and Guinhicna.[67] The rest of his testimony merely corroborated the testimonies of Robert and Ginyang.

Reynaldo Gumiho (Reynaldo)[68] testified that on the evening of 24 July 1998, he was in Poblacion, Maddela, Quirino, for a business transaction involving the sale of a 6x6 truck with a certain alias Boy. At about 8:00 p.m., Reynaldo and Boy proceeded to a beerhouse in Maddela. After settling with their drinks, Reynaldo heard a group of five men near their table who were conversing and he recognized from the accent of their voices that they were from Lagawe (Ifugao). One of the men then told him that they should leave after finishing their drinks because the former were looking for someone who killed their relative. Reynaldo disclosed that he recognized one of the persons whom he usually saw in Lagawe, and that the group was composed of relatively tall people who were mostly wearing jackets. Not long after, Reynaldo and Boy left the beerhouse so as not to get involved in any trouble. Two days after he left Maddela, Reynaldo learned of the shooting incident in the beerhouse.

In a Decision dated 24 July 2003, the trial court found appellants guilty of the charges, the dispositive portion of which reads:

WHEREFORE, premises considered, the court renders judgment as follows:

- 1) Finding accused Robert and Rudy, both surnamed Buduhan, GUILTY beyond reasonable doubt of the special complex crime of Robbery with Homicide (Par. 1 Article 294 of the Revised Penal Code) with respect to the deceased Larry Erese and sentences each of them to suffer the penalty of reclusion perpetua;
- 2) As to the victim Romualde Almeron, the court also finds them GUILTY beyond reasonable doubt of Homicide (Article 249 of the Revised Penal Code) and sentences each of them to the indeterminate penalty of 12 years of Prison Mayor as minimum to 20 years of Reclusion Temporal as maximum;

However, they shall be entitled to a deduction of their preventive imprisonment from the term of their sentences in accordance with Article 29 of the Revised Penal Code, as amended by R.A. No. 6127.

- 3) To pay jointly the heirs of Larry Erese the amount of P50,000.00 as civil indemnity, P25,000 as exemplary damages, P18,000 as actual expenses and P5,000 as temperate damages; and the heirs of Mr. Almeron: P50,000 as civil indemnity, P25,000 as exemplary damages, P38,000.00 as actual expenses and P5,000.00 as temperate damages.

With costs against them.

However, with respect to accused Boyet Ginyang, the court ACQUITS him of the offense charged since the prosecution had failed to overcome, with the required quantum of evidence, the constitutional presumption of innocence. Consequently, the Chief of the BJMP, Cabarroguis, Quirino, is hereby ordered to immediately release him from confinement unless being held for some other lawful cause; and to make a report hereon within three (3) days from receipt hereof.[69]

On 1 August 2003, the appellants filed a Notice of Appeal[70] raising questions of law and facts.

On 7 June 2004, the Court initially resolved to accept the appeal, docketed as G.R. No. 159843,[71] and required the appellants to file their Brief.[72]

However, on 5 October 2005, we resolved to transfer the case to the Court of Appeals in view of our ruling in *People v. Mateo*. [73] The case was then docketed as CA-G.R. CR-HC No. 01940.

On 29 December 2006, the Court of Appeals rendered its decision, the dispositive portion of which reads:

WHEREFORE, premises considered, the July 24, 2003 Decision of the Regional Trial Court of Maddela, Quirino, Branch 38, in Civil Case No. 39-18, is hereby MODIFIED only in that, in addition to the award already given by the trial court, in consonance with current jurisprudence, the heirs of ERESE are also entitled to moral damages of P50,000 and in addition to the award already given by the trial court, the heirs of ALMERON are also entitled to moral damages of P50,000.00.

Pursuant to Section 13(c), Rule 124 of the 2000 Rules of Criminal Procedure as amended by A.M. No. 00-5-03-SC dated September 28, 2004, which became effective on October 15, 2004, this judgment of the Court of Appeals may be appealed to the Supreme Court by notice of appeal filed with the Clerk of Court of the Court of Appeals.[74]

From the Court of Appeals, the case was then elevated to this Court for automatic review. In a Resolution[75] dated 5 September 2007, we required the parties to file their respective supplemental briefs, if they so desired, within 30 days from notice.

In a Manifestation[76] filed on 30 October 2007, the People informed the Court that it will no longer file a supplemental brief, as the arguments raised by appellants had already been discussed in the brief[77] filed before the Court of Appeals.

Appellants, on the other hand, filed their supplemental brief on 28 November 2007.

As a final plea for their innocence, appellants ask this Court to consider the following assignment of errors:

I.

IN GIVING COMPLETE CREDENCE TO THE TESTIMONY OF THE PRINCIPAL WITNESS OF THE PROSECUTION DESPITE THE PRESENCE OF FACTS TAINTING THE CREDIBILITY OF THE WITNESS.

II.

IN DISREGARDING THE DEFENSE OF THE APPELLANTS, WHICH WAS CORROBORATED BY THE FINDINGS OF THE FORENSIC CHEMIST.

III.

IN FAILING TO MAKE A DIRECT RULING ON THE MOTION OF THE ACCUSED TO QUASH THE INFORMATION ON THE GROUND THAT THE ARREST OF THE ACCUSED WITHOUT A WARRANT OF ARREST IS ILLEGAL AS THERE WAS NO PERSONAL KNOWLEDGE OF THE ARRESTING OFFICERS REGARDING THE COMMISSION OF THE CRIME.

To state differently, appellants argue that their guilt was not proven beyond reasonable doubt in view of the trial court's error in the appreciation of the evidence for and against them. They fault the trial court's over-reliance on the testimony of the prosecution's main witness and its failure to consider the glaring inconsistencies in Cherry Rose's previous accounts of the shooting incident.

The appeal lacks merit.

Appellants insist that Cherry Rose is not a credible witness in view of the conflicting answers she gave in her sworn statement before the police,[78] in the preliminary investigation of the case and in her testimony in open court. They contend that the trial court failed to scrutinize the entirety of the statements made by Cherry Rose vis-à-vis the shooting incident.

Appellants called attention to the fact that during the preliminary investigation of the case, Cherry Rose stated that a man wearing a white Giordano T-shirt shot Larry after Larry handed his wristwatch.[79] Thereafter, when Cherry Rose was asked whom she saw wearing a white Giordano T-shirt, she pointed to Boy Guinhicna.[80] With respect to appellant Robert Buduhan, Cherry Rose identified him as the one who shot Orlando Pascua.[81]

In the testimony of Cherry Rose in open court, however, she identified appellant Robert as the man who was wearing a white Giordano T-shirt and who shot Larry Erese.[82]

Also, in Cherry Rose's sworn statement before the police, she narrated that the group of the appellants, consisting of five persons, was already inside the RML Canteen before the shooting incident occurred.[83] However, in her direct examination, Cherry Rose stated that appellant Robert had only three other companions.[84]

Finally, in the preliminary investigation, appellants pointed out that Cherry Rose unhesitatingly admitted that Larry Erese was her intimate boyfriend and that was why she embraced him after the latter was shot.[85]

In her cross-examination, however, Cherry Rose stated that Larry was only a customer and not her boyfriend.[86] When questioned about her prior statement about this fact given during the preliminary investigation, Cherry Rose changed her answer and said that Larry was indeed her boyfriend.[87]

Taking all these circumstances into account, appellants argue that, judging from the conflicting statements of Cherry Rose, the identification of the accused is highly doubtful.

We are not persuaded.

As between statements made during the preliminary investigation of the case and the testimony of a witness in open court, the latter deserves more credence. Preliminary investigations are commonly fairly summary or truncated in nature, being designed simply for the determination, not of guilt beyond reasonable doubt, but of probable cause prior to the filing of an information in court. It is the statements of a witness in open court which deserve careful consideration.[88]

In any event, Section 13, Rule 132 of the Revised Rules on Evidence, on the matter of inconsistent statements by a witness, is revealing:

Section 13. How witness impeached by evidence of inconsistent statements. -- Before a witness can be impeached by evidence that he has made at other times statements inconsistent with his present testimony, the statements must be related to him, with the circumstances of the times and places and the persons present, and he must be asked whether he made such statements, and if so, allowed to explain them. If the statements be in writing they must be shown to the witness before any question is put to him concerning them.

The rule that requires a sufficient foundation to be first laid before introducing evidence of inconsistent statements of a witness is founded upon common sense and is essential to protect the character of a witness. His memory is refreshed by the necessary inquiries, which enable him to explain the statements referred to and to show that they were made by mistake, or that there was no discrepancy between them and his testimony.[89]

In the present case, the statements made by Cherry Rose during the preliminary investigation with respect to the identities of the accused were not related to her during the trial. Indeed, it is only during the appeal of this case that appellants pointed out the supposed inconsistencies in Cherry Rose's identification of the appellants in order to destroy her credibility as a witness. No opportunity was ever afforded her to provide an explanation. Without such explanation, whether plausible or not, we are left with no basis to evaluate and assess her credibility, on the rationale that it is only when no reasonable explanation is given by a witness in reconciling her conflicting declarations that she should be deemed impeached.[90]

In this regard, what the defense brought to Cherry Rose's attention during the trial were her contradictory statements about her romantic relationship with Larry Erese. As a result of this confrontation, Cherry Rose changed her answer. We rule, however, that this inconsistency relates only to an insignificant aspect of the case and does not involve a material fact in dispute.

Inasmuch as the above-stated mandatory procedural requirements were not complied with, the credibility of Cherry Rose as a witness stands unimpeached. As found by the trial court, the testimony of Cherry Rose was straightforward throughout. The appellants were not able to adduce any reason or motive for her to bear false witness against them. As a matter of fact, Cherry Rose testified during cross-examination that she did not personally know appellant Robert, and that she had first seen him only during the night when the shooting incident took place.[91]

As the trial judge who penned the assailed decision did not hear the testimonies of the witnesses for the prosecution,[92] the rule granting finality to the factual findings of trial courts does not find applicability to the instant case.[93]

After a careful review of the entire records of this case, the Court finds no reason to disagree with the factual findings of the trial court that all the elements of the crime of Robbery with Homicide were present and proved in this case.

Robbery with Homicide is penalized under Article 294, paragraph 1 of the Revised Penal Code,[94] which 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:

1. 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.

To warrant conviction for the crime of robbery with homicide, one that is primarily classified as a crime against property and not against persons, the prosecution has to firmly establish the following elements: (1) the taking of personal property with the use of violence or intimidation against the person; (2) the property thus taken belongs to another; (3) the taking is characterized by intent to gain or *animus lucrandi*; and (4) on the occasion of the robbery or by reason thereof, the crime of homicide, which is therein used in a generic sense, is committed.[95]

In Robbery with Homicide, so long as the intention of the felon is to rob, the killing may occur before, during or after the robbery. It is immaterial that death would supervene by mere accident, or that the victim of homicide is other than the victim of robbery, or that two or more persons are killed. Once a homicide is committed by reason or on the occasion of the robbery, the felony committed is the special complex crime of Robbery with Homicide.[96]

The original design must have been robbery; and the homicide, even if it precedes or is subsequent to the robbery, must have a direct relation to, or must be perpetrated with a view to consummate, the robbery. The taking of the property should not be merely an afterthought, which arose subsequently to the killing.[97]

With respect to the elements of the crime, the following excerpts from the direct testimony of Cherry Rose clearly illustrates the same, viz:

PROVINCIAL PROSECUTOR FERDINAND D. ORIAS -

Q:

At that night of July 24, 1998 at around 10:40 in the evening, what were you doing at RML Canteen?

A:

I was entertaining a costumer sir.

x x x x

Q:

Who was that person who requested you to entertain him?

A:

Larry Erese sir.

Q:

Do you recall if this Larry Erese have a companions (sic) that time?

A:

Yes, sir.

Q:

Name them?

A:

Abe at Nanding sir.

Q:

That night while you were entertaining them, this three (3) what transpired next?

A:

An Ifugao approached us sir and he poke a gun at Larry Erese sir.

Q:

And what did Larry Erese do when a gun was poke at him?

A:

He gave his wrist watch sir.

Q:

To whom did Larry Erese gave his wrist watch?

A:

To the Ifugao who poke a gun at him sir.

x x x x

Q:

Will you please go around and see if he is inside the courtroom and point at him?

A:

The witness is pointing to a man [seated] at the back bench of the court and when asked about his name he answered Robert Buduhan.

x x x x

Q:

What was the attire of Robert Buduhan at that time?

A:

White T-shirt sir.

Q:

Can you name or can you recall any particular description of that T-shirt worn by Robert Buduhan at that time?

x x x x

A:

It was marked with Giordano sir.

x x x x

Q:

When Robert Buduhan approached Larry Erese and Larry Erese gave his wrist watch, do you recall if Robert Buduhan have a companions (sic) at that time?

A:

There was sir.

Q:

How many of them?

A:

Four (4) sir.

x x x x

Q:

Where are these companions of Robert Buduhan at the time Robert Buduhan poke a gun at Larry Erese?

A:

The other one was there to my Manager [Romualde] Eddie Almeron sir.

Q:

What was the attire of this person who approached Eddie Almeron, your Manager?

A:

He was in blue sir.

x x x x

Q:

He wore blue T-shirt?

A:

Yes, sir.

x x x x

Q:

What about the other two (2) companions of Robert Buduhan where are they?

A:

They were inside sir.

Q:

The first of the two (2) what is the attire?

A:

Color red sir.

Q:

What about the last one?

A:

He was in blue T-shirt and with black jacket sir.

x x x

Q:

The person in red T-shirt whom you claim the companion of Robert Buduhan, can you identify him?

A:

Yes, sir.

x x x x

Q:

Stand and point at him?

A:

Witness pointed one of the accused sitting in front and when asked about his name he answered Rudy Buduhan.

x x x x

Q:

You mention about a person wearing blue T-shirt who approached your Manager Eddie Almeron. What did he do first before he approached your Manager if [any]?

A:

He poke a gun at our Manager sir.

Q:

What did he tell to you (sic) Manager if any while poking a gun?

A:

Holdup sir.

Q:

Are they simultaneous in approaching Larry Erese and Eddie Almeron, this person in blue T-shirt and the accused Robert Buduhan?

A:

No, sir. Robert Buduhan approached first.

Q:

And then the person in blue T-shirt likewise approached Eddie Almeron?

A:

Yes, sir.

x x x x

Q:

What transpired first before Larry Erese gave his wrist watch. The announcement of holdup or the giving of his wrist watch?

A:

The announcement of the holdup comes first sir.

Q:

When Larry Erese gave his watch to Robert Buduhan with Robert Buduhan poking a gun at Larry Erese, what transpired next?

A:

They fired sir.

Q:

Who fired?

A:

All of them sir.

x x x x

Q:

You mentioned a while ago that Robert Buduhan poke a gun at Larry Erese?

A:

Yes, sir.

Q:

Do you know the caliber of the gun?

A:

It looks like a 38 but it is long sir.

Q:

You likewise mention that the person in blue T-shirt poke a gun at Eddie Almeron?

A:

Yes, sir.

Q:

What about the person in red?

A:

It looks like an armalite sir.

Q:

What about the person in blue T-shirt with black jacket?

A:

Armalite sir.

Q:

When Rudy Buduhan fired his gun was there any person who was hit?

A:

There was sir.

Q:

Name that person?

A:

Larry Erese sir.

Q:

When the person in blue T-shirt who was poking a gun at Eddie Almeron fired his gun was there any person who was hit?

A:

There was sir.

Q:

Who was that person who was hit?

A:

Eddie Almeron sir.

x x x x

Q:

How far is Robert Buduhan from Larry Erese when Robert Buduhan fired his gun?

A:

He was arms like sir.

Q:

You mention also about a person in blue T-shirt fired a gun at Eddie Almeron. How far was he from Eddie Almeron when he fired his gun?

A:

The witness pointed to a place in the courtroom.

x x x x

COURT -

About 2 to 3 meters?

PROVINCIAL PROSECUTOR FERDINAND D. ORIAS -

Yes, 2 to 3 meters.

x x x x

Q:

Do you know what happened to Larry Erese?

A:

Yes, sir.

Q:

Where is he now?

A:

He was dead already sir.

Q:

What about Eddie Almeron. Do you know what happened to him?

A:

He was also dead sir.[98]

Quite obvious from the foregoing testimony is that the act of appellant Robert and his companion in blue T-shirt of poking their guns towards Larry and Romualde, respectively, and the announcement of a hold-up were what caused Larry to give his watch to Robert. At this point, there already occurred the taking of personal property that belonged to another person, which was committed with violence or intimidation against persons.

Likewise, the intent to gain may already be presumed in this case. *Animus lucrandi* or intent to gain is an internal act, which can be established through the overt acts of the offender.[99] The unlawful act of the taking of Larry's watch at gunpoint after the declaration of a hold-up already speaks well enough for itself. No other intent may be gleaned from the acts of the appellant's group at that moment other than to divest Larry of his personal property.

The appellants acted in conspiracy in perpetrating the crimes charged. As found by the trial court, conspiracy was proved by the concurrence of the following facts: that the four men were together when they entered the RML canteen; that they occupied the same table; that they were all armed during that time; that while the robbery was in progress, neither Rudy nor the one in blue T-shirt with black jacket prevented the robbery or the killing of the victims; that all four fired their firearms when the robbery was going on and that they fled all together and were seen running by the police before they were intercepted just a few meters from the scene of the crime.

There is conspiracy when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. The same degree of proof necessary to prove the crime is required to support a finding of criminal conspiracy. Direct proof, however, is not essential to show conspiracy.[100] Proof of concerted action before, during and after the crime, which demonstrates their unity of design and objective is sufficient.[101]

As the fatal shooting of both Larry Erese and Romualde Almeron happened on the occasion of the robbery and was subsequent thereto, both of the appellants must be held liable for the crime of Robbery with Homicide on two counts.

The defense of appellants of alibi is at best weak when faced with the positive identification of the appellants by the prosecution's principal witness. It is elemental that for alibi to prosper, the requirements of time and place must be strictly met. This means that the accused must not only prove his presence at another place at the time of the commission of the offense but he must also demonstrate that it would be physically impossible for him to be at the scene of the crime at that time.[102] In the present case, there was absolutely no claim of any fact that would show that it was well nigh impossible for appellants to be present at the *locus criminis*. In fact, they all testified that they were going towards the vicinity of the area of the shooting incident when the police apprehended them.

The testimonies of Robert Buduhan and Boyet Ginyang were also markedly inconsistent on the material date as to when the witnesses in the shooting incident identified them. Robert Buduhan testified that the three lady witnesses came to identify them at the municipal jail on the evening of 26 July 1998.[103] However, in the direct examination of Boyet Ginyang, he testified that said witnesses arrived on the morning of 25 July 1998.[104] This fact only tends to lend suspicion to their already weak alibi.

Appellants likewise cannot rely on the negative findings of Police Inspector Chua-Camarao on the paraffin tests conducted in order to exculpate themselves. The said witness herself promptly stated that paraffin test results are merely corroborative of the major evidence offered by any party, and they are not conclusive with respect to the issue of whether or not the subjects did indeed fire a gun. As previously mentioned, the positive and negative results of the paraffin test can also be influenced by certain factors affecting the conditions surrounding the use of the firearm, namely: the wearing of gloves by the subject, perspiration of the hands, wind direction, wind velocity, humidity, climate conditions, the length of the barrel of the firearm or the open or closed trigger guard of the firearm.

Lastly, the persistent claim of appellants of the illegality of their warrantless arrest, due to the lack of personal knowledge on the part of the arresting officers, deserves scant consideration. As aptly stated in *People v. Salazar*,<sup>[105]</sup> granting arguendo that appellants were illegally arrested, such arrest did not invest these eyewitness accounts with constitutional infirmity as "fruits of the poisonous tree." Considering that their conviction could be secured on the strength of the testimonial evidence given in open court, which are not inadmissible in evidence, the court finds no reason to further belabor the matter.

A determination of the appropriate imposable penalties is now in order.

The prescribed penalty for Robbery with Homicide under Article 294 of the Revised Penal Code, as amended, is reclusion perpetua to death. In accordance with Article 63 of the Revised Penal Code, when the law prescribes a penalty composed of two indivisible penalties, and there are neither mitigating nor aggravating circumstances, the lesser penalty shall be applied.

The RTC and the Court of Appeals thus correctly imposed the penalty of reclusion perpetua.

As regards the charge for the death of Orlando Pascua and the injuries sustained by Fernando Pera and Gilbert Cortez, the trial court aptly held that the prosecution failed to substantiate the same. No witnesses were presented to testify as to the circumstances leading to the said incidents, and neither were they proved to be caused by the criminal actions of the appellants.

The two courts below committed a mistake, however, in convicting the appellants separately of the crime of Homicide for the death of Romualde Almeron. It bears stressing that in the special complex crime of Robbery with Homicide, so long as the intention of the felon is to rob, the killing may occur before, during or after the robbery. It is immaterial that death would supervene by mere accident, or that the victim of homicide is other than the victim of robbery, or that two or more persons are killed. Once a homicide is committed by reason or on the occasion of the robbery, the felony committed is the special complex crime of Robbery with Homicide.<sup>[106]</sup>

As to the award of damages, we hold that the heirs of Larry Erese and Romualde Almeron are each entitled to the amount of P50,000.00 as civil indemnity ex delicto. This 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.<sup>[107]</sup>

We agree with the Court of Appeals' grant of moral damages in this case even in the absence of proof for the entitlement to the same. As borne out by human nature and experience, a violent death invariably and necessarily brings about emotional pain and anguish on the part of the victim's family. It is inherently human to suffer sorrow, torment, pain and anger when a loved one becomes the victim of a violent or brutal killing.<sup>[108]</sup> The heirs of Erese and Almeron are thus entitled to moral damages in the amount of P50,000.00 each.

On the award of actual damages, we hold that the heirs of Larry Erese are entitled to the award of temperate damages for P25,000.00, in lieu of the lower amount of P18,000 that was substantiated by a receipt. In *People v. Villanueva*,<sup>[109]</sup> we have laid down the rule that when actual damages proven by receipts during the trial amount to less than P25,000.00, the award of temperate damages for P25,000.00 is justified in lieu of actual damages of a lesser amount. Conversely, if the amount of actual damages proven exceeds P25,000.00, then temperate damages may no longer be awarded. Actual damages based on the receipts presented during trial should instead be granted.

However, with respect to the award of the amount of P38,000.00 to the heirs of Romualde Almeron, the same is incorrect since the receipt presented therefor covers only the amount of P26,000.00. The award of actual damages should be reduced accordingly. The grant of temperate damages to the heirs of Almeron is thus deleted.

The award of exemplary damages is likewise deleted, as the presence of any aggravating circumstance was

neither alleged nor proved in this case.[110]

WHEREFORE, premises considered, the decision dated 29 December 2006 of the Court of Appeals in CA-G.R. CR-HC No. 01940 is hereby MODIFIED as follows:

- For the death of Larry Erese, appellants Robert Buduhan y Bullan and Rudy Buduhan y Bullan are found GUILTY beyond reasonable doubt of Robbery with Homicide and sentenced each to suffer the penalty of reclusion perpetua.
- For the death of Romualde Almeron, appellants Robert Buduhan y Bullan and Rudy Buduhan y Bullan are found GUILTY beyond reasonable doubt of Robbery with Homicide and sentenced each to suffer the penalty of reclusion perpetua.
- Appellants shall be entitled to a deduction of their preventive imprisonment from the term of their sentences in accordance with Article 29 of the Revised Penal Code, as amended by Republic Act No. 6127.
- Appellants are ordered to indemnify jointly and severally the heirs of Larry Erese as follows: (a) P50,000.00 as civil indemnity; (b) P50,000.00 as moral damages; and (c) P25,000.00 as temperate damages.
- Appellants are ordered to indemnify jointly and severally the heirs of Romualde Almeron as follows: (a) P50,000.00 as civil indemnity; (b) P50,000.00 as moral damages; and (c) P26,000.00 as actual damages.
- For reasons herein stated, appellants are ACQUITTED of the separate crime of Homicide for the death of Romualde Almeron.

No costs.

**SO ORDERED.**

Ynares-Santiago, (Chairperson), Austria-Martinez, Nachura, and Reyes, JJ., concur.

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[1] Penned by Associate Justice Vicente Q. Roxas with Associate Justices Josefina Guevara-Salonga and Apolinario D. Bruselas, Jr. concurring; rollo, pp. 3-13.

[2] Penned by Judge Menrado V. Corpuz; CA rollo, pp. 27-41.

[3] CA rollo, pp. 13-14.

[4] Records, Vol. 1, pp. 73-74.

[5] RULES OF COURT, Rule 113, Section 5 provides the instances when a warrantless arrest may be lawfully made, to wit:

SEC. 5. Arrest without warrant; when lawful. - A peace officer or a private person may, without a warrant, arrest a person:

- (a) When, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense;
- (b) When an offense has just been committed and he has probable cause to believe based on personal knowledge of facts or circumstances that the person to be arrested has committed it; and
- (c) When the person to be arrested is a prisoner who has escaped from a penal establishment or place where he is serving final judgment or is temporarily confined while his case is pending, or has escaped while being transferred

from one confinement to another.

[6] Records, Vol. 1, pp. 94-95.

[7] Id. at 116.

[8] Id. at 114.

[9] Id.

[10] Id. at 89.

[11] Id. at 125.

[12] TSN, 14 February 2000.

[13] TSN, 12 April 2000.

[14] TSN, 15 February 2000.

[15] TSN, 16 February 2000.

[16] Id.

[17] TSN, 23 May 2002.

[18] TSN, 19 June 2002.

[19] TSN, 9 July 2002.

[20] TSN, 23 August 2002.

[21] TSN, 10 January 2003.

[22] TSN, 14 February 2000, p. 7.

[23] Id. at 24.

[24] Id. at 35.

[25] Exhibit "A" for the prosecution.

[26] TSN, 14 February 2000, p. 13.

[27] Id. at 11.

[28] Id. at 12.

[29] Id. at 9.

[30] Id. at 11, 39.

[31] Id. at 14.

[32] Id. at 17.

[33] Id. at 17-18.

[34] TSN, 12 April 2000, pp. 3-16.

[35] Joint Affidavit of SPO3 Alex M. Gumayagay and SPO1 Leo T. Saquing, Exhibit "M" for the Prosecution,

Records, Vol. 1, p. 15.

[36] Id. at 4-5.

[37] Id. at 16.

[38] Cherry Rose Salazar, Maureen Pasion and Marveloza Lopez. (TSN, 12 April 2000, p. 15.)

[39] TSN, 12 April 2000, p. 5.

[40] TSN, 15 February 2000, pp. 4-5.

[41] The circumstances of Orlando Pascua's death were not testified to by any of the witnesses for the prosecution during the trial. It was during the preliminary investigation of the case before the sala of the Municipal Circuit Trial Judge Moises M. Pardo when Maureen Pasion, an employee of the RML Canteen, narrated how the assailants shot Orlando Pascua. (Records, Vol. 1, pp. 46-49). The prosecution no longer presented said witness.

[42] TSN, 15 February 2000, p. 4.

[43] Exhibit "D" for the Prosecution, Records, Vol. 1, p. 59.

[44] Exhibit "F" for the Prosecution.

[45] TSN, 15 February 2000, p. 5.

[46] Exhibit "E" for the Prosecution, Records, Vol. 1, p. 60.

[47] TSN, 15 February 2000, p. 6.

[48] Exhibit "G" for the Prosecution, Records, Vol. 1, p. 122.

[49] TSN, 16 February 2000, pp. 6-9.

[50] Exhibit "I" for the Prosecution, Records, Vol. 2, p. 339.

[51] Exhibit "J" for the Prosecution, Records, Vol. 2, p. 340.

[52] Exhibit "K," id. at 341.

[53] TSN, 16 February 2000, p. 18.

[54] Id. at 17.

[55] Exhibit "L" for the Prosecution.

[56] Records, Vol. 1, pp. 205-206.

[57] TSN, 23 May 2002, pp. 7-26.

[58] TSN, 19 June 2002, pp. 8-20.

[59] TSN, 9 July 2002, pp. 6-12.

[60] Exhibit "2" for the Defense, CA rollo, p. 92.

[61] Exhibit "2-A" for the Defense, Records, Vol. 2, p. 312.

[62] Exhibits "2-B," "2-C," "2-D," and "2-E," respectively, Records, Vol. 2, pp. 313-327.

[63] Exhibit "1" for the Defense, Records, Vol. 1, p. 310.

[64] TSN, 9 July 2002, pp. 13-16.

[65] TSN, 23 August 2002, p. 7.

[66] TSN, 9 July 2002, pp. 8-9.

[67] *Id.* at 10-11.

[68] TSN, 10 January 2003, pp. 3-10.

[69] CA rollo, pp. 40-41.

[70] *Id.* at 42.

[71] *Id.* at 44.

[72] *Id.* at 46.

[73] In the said case, we ruled thus:

While the Fundamental Law requires a mandatory review by the Supreme Court of cases where the penalty imposed is reclusion perpetua, life imprisonment, or death, nowhere, however, has it proscribed an intermediate review. If only to ensure utmost circumspection before the penalty of death, reclusion perpetua or life imprisonment is imposed, the Court now deems it wise and compelling to provide in these cases a review by the Court of Appeals before the case is elevated to the Supreme Court. Where life and liberty are at stake, all possible avenues to determine his guilt or innocence must be accorded an accused, and no care in the evaluation of the facts can ever be overdone. A prior determination by the Court of Appeals on, particularly, the factual issues, would minimize the possibility of an error of judgment. If the Court of Appeals should affirm the penalty of death, reclusion perpetua or life imprisonment, it could then render judgment imposing the corresponding penalty as the circumstances so warrant, refrain from entering judgment and elevate the entire records of the case to the Supreme Court for its final disposition. (G.R. Nos. 147678-87, 7 July 2004, 433 SCRA 640, 656). (Emphasis ours).

[74] Rollo, pp. 12-13.

[75] *Id.* at 18.

[76] *Id.* at 19-21.

[77] CA rollo, pp. 103-119.

[78] Exhibit "C-C2" for the Prosecution, records, Vol. 1, pp. 10-12.

[79] Minutes of the Preliminary Investigation, records, Vol. 1, p. 43.

[80] *Id.* at 44.

[81] *Id.* at 45.

[82] TSN, 14 February 2000, p. 9, 15.

[83] Sworn Statement of Cherry Rose Salazar, Exhibit "C-C2" for the Prosecution, records, Vol. 1, p. 11.

[84] TSN, 14 February 2000, p. 10.

[85] Minutes of the Preliminary Investigation, records, Vol. 1, pp. 43-44.

[86] TSN, 14 February 2000, p. 29.

[87] Id. at 30-33.

[88] *People v. Villanueva*, G.R. No. 96469, 21 October 1992, 215 SCRA 22, 28-29.

[89] *People v. de Guzman*, 351 Phil. 587, 596 (1998).

[90] Id. at 596-597.

[91] TSN, 14 February 2000, pp. 35-36.

[92] The Honorable Theresa Dela Torre-Yadao heard the prosecution witnesses' testimonies before the Honorable Menrado V. Corpuz took over and eventually penned the decision.

[93] See *People v. Navarro*, 357 Phil. 1010, 1024 (1998).

[94] As amended by paragraph 1 of Section 9 of Republic Act No. 7659 (An Act to Impose the Death Penalty on Certain Heinous Crimes, Amending for that Purpose the Revised Penal Laws, as Amended, Other Special Penal Laws, and for Other Purposes).

[95] *People v. Lara*, G.R. No. 171449, 23 October 2006, 505 SCRA 137, 154, citing *People v. Del Rosario*, 411 Phil. 676, 685 (2001).

[96] *People v. Cabbab, Jr.*, G.R. No. 173479, 12 July 2007, 527 SCRA 589, 604, citing *People v. De Jesus*, G.R. No. 134815, 27 May 2004, 429 SCRA 384, 403.

[97] *People v. Lara*, *supra* note 95, citing *People v. Consejero*, 404 Phil. 914, 932-933 (2001).

[98] TSN, 14 February 2000, pp. 8-18.

[99] *People v. Gavina*, 332 Phil. 488, 495 (1996).

[100] *People v. Ponce*, 395 Phil. 563, 571-572 (2000).

[101] Id.

[102] *People v. Fuertes*, 357 Phil. 603, 612-613 (1998).

[103] TSN, 23 May 2002, p. 20.

[104] TSN, 19 June 2002, p. 15.

[105] 342 Phil. 745 (1997).

[106] *People v. Jabiniao*, G.R. No. 179499, 30 April 2008.

[107] *People v. Opuran*, 469 Phil. 698, 720 (2004).

[108] *People v. Piedad*, 441 Phil. 818, 839 (2002), cited in *People v. Rubiso*, 447 Phil. 374, 383 (2003).

[109] 456 Phil. 14, 29 (2003).

[110] Article 2230 of the Civil Code provides:

ART. 2230. In criminal offenses, exemplary damages as a part of the civil liability may be imposed when the crime was committed with one or more aggravating circumstances. Such damages are separate and distinct from fines and shall be paid to the offended party.

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