

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. LEO QUEMEGGEN AND JANITO DE LUNA, ACCUSED-APPELLANTS.

G.R. No. 178205. July 27, 2009

Ponente: NACHURA, J.

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NACHURA, J.:

For review is the Decision[1] of the Court of Appeals (CA) dated December 28, 2006 in CA-G.R. CR-H.C. No. 01498 affirming with modification the Decision[2] of the Regional Trial Court (RTC), Branch 72, Malabon, Metro Manila, dated August 8, 1997.

As established by the prosecution, the facts are as follows:

On October 31, 1996, at around 11:00 in the evening, Noel Tabernilla (Tabernilla) was driving his passenger jeep to Navotas, Metro Manila. Along Road 10 in Navotas, four of the passengers announced a hold-up. One of the robbers poked a balisong on Tabernilla's nape,[3] while the other three divested the passengers of their valuables.[4] Then, the hold-uppers alighted from the jeep in a place called "Putting Bato." [5]

From there, Tabernilla and six or seven of his passengers went to the nearest police detachment to report the incident. Three policemen accompanied them to the scene of the crime. While there, the policemen chanced upon the robbers riding a pedicab. Socrates Kagalingan (Kagalingan), one of the passengers-victims, recognized the perpetrators, since one of them was still wearing the belt bag that was taken from him.[6]

The policemen were able to arrest three suspects, including Janito de Luna (de Luna), but Leo Quemeggen (Quemeggen) was able to escape. The three suspects were left under the care of a police officer, Emelito Suing (Suing), while the other police officers pursued Quemeggen. Taking advantage of the situation, the three suspects ganged up on Suing; de Luna held his hand, while the other suspect known as "Weng-Weng" shot him on the head.[7] The suspects thereafter escaped.

Upon the return of the two policemen who unsuccessfully pursued Quemeggen, Suing was brought to the hospital where he eventually died.[8] Dr. Rosalyn Cosidon (Dr. Cosidon) of the Philippine National Police (PNP) Crime Laboratory conducted an autopsy on the cadaver of Suing.[9] She concluded that the cause of the death of Suing was hemorrhage as a result of a gunshot wound in the head. The results of her examination were reflected in Medico-Legal Report No. M-1614-96.[10]

Appellants Quemeggen and de Luna were eventually arrested through follow-up operations undertaken by the Navotas Police.[11] On November 5, 1996, appellants were charged in an Information for Robbery with Homicide, the pertinent portion of which reads:

That on or about the 31[st] day of October 1996, in Navotas, Metro Manila, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring together and mutually helping one another, with intent to gain and by means of force, violence and intimidation employed upon the person of one SOCRATES KAGALINGAN Y ROXAS, did then and there willfully, unlawfully and feloniously take, rob and carry away

the following articles to wit:

One (1) gold necklace worth ----- P1,800.00
One (1) men's wrist watch ----- 2,000.00
Cash money amounting to ----- 500.00_

Total ----- P4,300.00

belonging to said complainant, to the damage and prejudice of the latter in the total amount of P4,300.00; that on the occasion of the said Robbery one of the arrested suspect[s] dr[e]w a handgun and shot one PO2 SUING, thereby inflicting upon the said PO2 Suing, serious physical injuries, which directly caused his death.

CONTRARY TO LAW.[12]

Upon arraignment, appellants pleaded "Not Guilty." [13] As the appellants manifested [14] that they were not availing of the pre-trial conference, trial on the merits ensued.

During the trial, Tabernilla and Kagalingan testified for the prosecution. Dr. Cosidon's testimony as an expert witness was dispensed with in view of the appellants' admission of her qualification and competence; the fact that she conducted the autopsy on the cadaver of the victim; that she prepared the sketches of a human body; that a slug was recovered from the head of the victim; and that the body of the victim was identified prior to the autopsy. [15]

Appellants, on the other hand, interposed the defense of alibi. They maintained that they were elsewhere when the robbery and shooting incident took place. They claimed that they were in their respective houses: Quemeggen was helping his grandmother cut pieces of cloth used in making rugs, while de Luna was sleeping with his wife. [16]

On August 8, 1997, the RTC rendered a Decision [17] convicting the appellants of Robbery with Homicide, the dispositive portion of which reads:

WHEREFORE, premises considered, judgment is hereby rendered finding accused Leo Quemeggen y Larawan and Janito de Luna y Rayo GUILTY beyond reasonable doubt of the crime of robbery with homicide defined and penalized under Art. 294, par. 1, of the Revised Penal Code, as amended by RA 7659, for which they are both hereby sentenced to the prison term of RECLUSION PERPETUA.

Accused Quemeggen and accused de Luna are also ordered to pay (1) the heirs of the victim the amount of P50,000.00 as indemnification for the loss of the victim's life, and (2) P4,000.00 to Socrates Kagalingan by way of indemnification of the total value of the valuables taken from him during the hold-up.

Costs against the two (2) accused.

SO ORDERED. [18]

The case was elevated to this Court for automatic review, but on February 9, 2005, pursuant to the decision of this Court in *People v. Mateo*, [19] we transferred the case to the CA. [20]

On December 28, 2006, the CA modified the RTC Decision by convicting Quemeggen of Robbery, and de Luna of the separate crimes of Robbery and Homicide. The dispositive portion of the CA decision reads:

WHEREFORE, in view of the foregoing, the Decision of the Regional Trial Court of Malabon, Metro Manila, Branch 72, in Criminal Case No. 17287-MN dated 8 August 1997 is hereby MODIFIED as follows:

- As to accused-appellant Leo Quemeggen: he is found guilty of the crime of Robbery and is hereby sentenced to suffer imprisonment ranging from four (4) years of prision correc[c]ional as minimum to eight (8) years of

prison mayor as maximum with the accessories of said penalty; and

- As to accused-appellant Janito de Luna: he is found guilty of the crime of Robbery and is sentenced to suffer imprisonment ranging from four (4) years of prison correc[t]ional as minimum to eight (8) years of prison mayor as maximum with the accessories of said penalty. He is likewise found guilty of the crime of Homicide and is sentence[d] to suffer imprisonment of eight (8) years and one (1) day of prison mayor as minimum to seventeen (17) years and four (4) months of reclusion temporal as maximum with the accessories of said penalty.

- Both accused-appellants area (sic) also ordered to indemnify Socrates Kagalingan the amount of Four Thousand Pesos (P4,000.00) for the valuables taken from him during the robbery.

SO ORDERED.[21]

The CA concluded that appellants could not be convicted of the special complex crime of Robbery with Homicide. It noted that Suing was not killed by reason or on the occasion of the robbery. Hence, two separate crimes of robbery and homicide were committed. As the appellants were in conspiracy to commit robbery, both were convicted of such offense. However, as to the death of Suing, considering that at the time of the killing, Quemeggen was being chased by the police officers and there was no evidence showing that there was conspiracy, only de Luna was convicted of homicide.[22]

Hence, this appeal, based on the following arguments:

I.

THE TRIAL COURT GRAVELY ERRED IN GIVING FULL WEIGHT AND CREDENCE TO THE INCREDIBLE TESTIMONIES OF THE PROSECUTION WITNESSES AND IN NOT CONSIDERING THE DEFENSE INTERPOSED BY THE ACCUSED-APPELLANTS.

II.

THE TRIAL COURT GRAVELY ERRED IN CONVICTING ACCUSED-APPELLANTS OF THE CRIME CHARGED DESPITE FAILURE OF THE PROSECUTION TO PROVE THEIR GUILT BEYOND REASONABLE DOUBT.[23]

In assailing their conviction, appellants argue that: 1) the testimonies of the prosecution witnesses are incredible, because it was unnatural for the robbers not to leave the crime scene immediately after the incident; 2) the prosecution failed to present a policeman to prove that appellants were arrested on board a pedicab, and that the loot from the robbery was confiscated from them; and 3) no expert testimony was presented to prove the fact of death of the victim.[24]

We find no merit in the appeal.

Appellants fault the CA for relying on the improbable testimonies of the prosecution witnesses, who testified that they saw the former at the crime scene riding a pedicab. Appellants add that it was improbable for them not to leave the crime scene immediately after the robbery. It is well-settled that different people react differently to a given situation, and there is no standard form of human behavioral response when one is confronted with a strange event.[25] Moreover, when it comes to credibility, the trial court's assessment deserves great weight and is even conclusive and binding, if not tainted with arbitrariness or oversight of some fact or circumstance of weight and influence. The reason is obvious. Having the full opportunity to observe directly the witnesses' deportment and manner of testifying, the trial court is in a better position than the appellate court to evaluate testimonial evidence properly.[26]

Appellants' conviction is not negated by the failure of the prosecution to present any police officer to testify that appellants were arrested on board a pedicab, and that the loot from the robbery was confiscated from them; and an expert witness to testify on the cause of death of the victim. Kagalingan and Tabernilla's testimonies as to the circumstances surrounding the robbery and the killing were sufficient. It must be recalled that they were eyewitnesses to the commission of the crimes. These witnesses adequately narrated the events that transpired from the time the appellants declared a hold-up up to the time they alighted from the passenger jeep. They also witnessed how de Luna and the other malefactors strangled and eventually shot Suing.

As to the non-presentation of Dr. Cosidon as an expert witness, records show that appellants, through their counsel de oficio, admitted in open court her qualifications and competence, the conduct of autopsy and the results thereof as appearing in Dr. Cosidon's report, including the cause of death.[27] Hence, the presentation of an expert witness was no longer necessary.

Now, on the nature of the crime or crimes committed. The Information shows that appellants were charged with Robbery with Homicide under Article 294 of the Revised Penal Code, which provides in part:

"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."

For the accused to be convicted of the said crime, the prosecution is burdened to prove the confluence of the following elements:

- 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.[28]

We reiterate, at this point, the relevant factual circumstances. Appellants, together with the other suspects, boarded Tabernilla's passenger jeep. Suddenly, they announced a hold-up. One of them poked a balisong at the neck of Tabernilla, while the others divested the passengers of their valuables. Obviously, in boarding the passenger jeep, announcing a hold-up, and eventually taking the personal belongings of the passengers, appellants had the intent to gain. Thus, the first three elements of the crime were adequately proven.

The only question is whether the fourth element was present, i.e., that by reason or on the occasion of the robbery, homicide was committed.

Homicide is said to have been committed by reason or on the occasion of robbery if it is committed a) to facilitate the robbery or the escape of the culprit; b) to preserve the possession by the culprit of the loot; c) to prevent discovery of the commission of the robbery; or d) to eliminate witnesses to the commission of the crime.[29]

Given the circumstances surrounding the instant case, we agree with the CA that appellants cannot be convicted of Robbery with Homicide. Indeed, the killing may occur before, during, or after the robbery. And 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.[30] However, 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.[31]

From the testimonies of the prosecution witnesses, we cannot see the connection between the robbery and the homicide. It must be recalled that after taking the passengers' personal belongings, appellants (and two other suspects) alighted from the jeepney. At that moment, robbery was consummated. Some of the passengers, however, decided to report the incident to the proper authorities; hence, they went to the nearest police station. There, they narrated what happened. The police eventually decided to go back to the place where the robbery took place. Initially, they saw no one; then finally, Kagalingan saw the suspects on board a pedicab. De Luna and two other suspects were caught and left under the care of Suing. It was then that Suing was killed. Clearly, the killing was distinct from the robbery. There may be a connection between the two crimes, but surely, there was no "direct connection."

Though appellants were charged with Robbery with Homicide, we find Quemeggen guilty of robbery, and de Luna of two separate crimes of robbery and homicide. It is axiomatic that the nature and character of the crime charged are determined not by the designation of the specific crime, but by the facts alleged in the information.[32] Controlling in an information should not be the title of the complaint or the designation of the offense charged or the particular law or part thereof allegedly violated, these being, by and large, mere conclusions of law made by the prosecutor, but the description of the crime charged and the particular facts therein recited.[33] There should also be no problem in convicting an accused of two or more crimes erroneously charged in one information or complaint, but later proven to be independent crimes, as if they were made the subject of separate complaints or informations.[34]

As worded, the Information sufficiently alleged all the elements of both felonies.

Needless to state, appellants failed, before their arraignment, to move for the quashal of the Information, which appeared to charge more than one offense. They have thereby waived any objection thereto, and may thus be found guilty of as many offenses as those charged in the Information and proven during the trial.[35]

As to the proper penalty, we sustain the appellate court. The penalty for simple robbery is prision correccional in its maximum period to prision mayor in its medium period, ranging from 4 years, 2 months and 1 day to 10 years.[36] Applying the Indeterminate Sentence Law, the maximum term thereof shall be 6 years, 1 month and 11 days to 8 years and 20 days; while the minimum term shall be within the range of the penalty next lower in degree or 4 months and 1 day to 4 years and 2 months. The CA thus correctly imposed the indeterminate penalty of 4 years of prision correccional as minimum to 8 years of prision mayor as maximum.

On the other hand, the penalty for homicide is reclusion temporal or 12 years and 1 day to 20 years.[37] The maximum term of the indeterminate penalty shall be 14 years, 8 months and 1 day to 17 years and 4 months; while the minimum term shall be within the range of prision mayor or 6 years and 1 day to 12 years. Therefore, the CA was correct in imposing the indeterminate penalty of 8 years and 1 day of prision mayor as minimum to 17 years and 4 months of reclusion temporal as maximum.

The Court notes that the CA failed to award civil indemnity ex delicto to the heirs of Suing. Civil indemnity is automatically imposed upon the accused without need of proof other than the fact of the commission of murder or homicide.[38] Thus, de Luna shall be liable to pay P50,000.00 as civil indemnity for the death of Suing.

Records show that appellants were committed to prison on November 14, 1996.[39] As to Quemeggen, considering that he has been incarcerated for more than twelve (12) years now, which is more than the maximum penalty for the crime of robbery he committed which is only eight (8) years, he should be released from confinement.

WHEREFORE, premises considered, the appeal is DISMISSED. The Decision of the Court of Appeals dated December 28, 2006 in CA-G.R. CR-H.C. No. 01498, is AFFIRMED with MODIFICATION. Janito de Luna is further ordered to pay the heirs of police officer Emelito Suing P50,000.00 as civil indemnity.

Considering that Quemeggen has been incarcerated for more than the maximum penalty for the crime of robbery he committed, the Director of the Bureau of Corrections is hereby ORDERED to immediately RELEASE LEO QUEMEGGEN from confinement, unless further detention is justified by some other lawful cause, and inform this Court of the action taken within five (5) days from receipt hereof.

SO ORDERED.

Ynares-Santiago, J., Chairperson, Chico-Nazario, Velasco, Jr. Nachura, and Peralta, JJ.

[1] Penned by Associate Justice Andres B. Reyes, Jr., with Associate Justices Hakim S. Abdulwahid and Mariflor P. Punzalan Castillo, concurring; rollo, pp. 3-17.

[2] Penned by Judge Benjamin M. Aquino, Jr.; CA rollo, pp. 15-20.

[3] Id. at 16.

[4] Rollo, p. 5.

[5] CA rollo, p. 16.

[6] Id.

[7] Rollo, p. 6.

[8] CA rollo, p. 17.

[9] Records, p. 63.

[10] Id. at 76.

[11] Id. at 4.

[12] Id. at 2.

[13] Id. at 19.

[14] Id. at 22.

[15] Id. at 63.

[16] Rollo, p. 9.

[17] Supra note 2.

[18] CA rollo, pp. 19-20.

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

[20] CA rollo, p. 104.

[21] Rollo, pp. 16-17.

[22] Id. at 12-15.

[23] CA rollo, p. 51.

[24] Id. at 52-53.

[25] *People v. Reyes*, 447 Phil. 668, 676 (2003).

[26] *People v. Lara*, G.R. No. 171449, October 23, 2006, 505 SCRA 137, 152.

[27] Records, p. 64.

[28] *People v. Lara*, supra at 154; *People v. De Jesus*, G.R. No. 134815, May 27, 2004, 429 SCRA 384, 401-402; *People v. Sanchez*, 358 Phil. 527, 535 (1998).

[29] *People v. Jabiniao, Jr.*, G.R. No. 179499, April 30, 2008, 553 SCRA 769, 783; *People v. De Jesus*, supra at 403.

[30] *People v. Jabiniao, Jr.*, supra at 783; *People v. De Jesus*, supra at 402.

[31] *People v. Werba*, G.R. No. 144599, June 9, 2004, 431 SCRA 482, 497; *People v. Cando*, 398 Phil. 225, 240 (2000).

[32] *People v. Lara*, supra note 26, at 156.

[33] *People v. Taño*, 387 Phil. 465, 487 (2000).

[34] Id.

[35] *People of the Philippines v. Tamayo*, 434 Phil. 642, 655-656 (2002); *People v. Taño*, supra at 487.

[36] Article 294 (5), Revised Penal Code.

[37] Article 249, Revised Penal Code.

[38] *Razon v. People*, G.R. No. 158053, June 21, 2007, 525 SCRA 284, 303; *People v. Dagani*, G.R. No. 153875, August 16, 2006, 499 SCRA 64; *People v. Se*, 469 Phil. 763 (2004).

[39] Records, p. 14.

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