

PEOPLE OF THE PHILIPPINES APPELLEE, VS. ALEJANDRO SORILA, JR. Y SUPIDA AND JOSE BALAUSA Y CANTOR, APPELLANTS.

G.R. No. 178540. June 27, 2008

Ponente: YNARES-SATIAGO, J.

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YNARES-SATIAGO, J.:

Alejandro Sorila, Jr., Jose Balausa and Antonio Quimno were charged with the complex crime of Robbery with Homicide in an Information[1] which reads:

On or about October 12, 2001, in Pasig City, and within the jurisdiction of this Honorable Court, the accused, conspiring and confederating together with four unidentified male persons whose true identities and present whereabouts are still unknown, and all of them mutually helping and aiding one another, with intent to gain and by means of force, violence or intimidation, did then and there willfully, unlawfully and feloniously take, steal and divest the following to wit:

a) cash money amounting to P250,000.00 belonging to Canscor Construction and Development Incorporation, represented by Engr. Armando Baler y Almario;

b) one (1) Citizen gold automatic watch valued at P2,500.00 belonging to Nelia Panaga;

c) one (1) Nokia 5110 cellphone valued at P4,500.00 belonging to Nelia Panaga;

d) one (1) 14k gold bracelet valued at P1,200.00 belonging to Nelia Panaga;

e) cash money amounting to P50.00 belonging to Clara Bisnar y Calasara;

f) one (1) Nokia 3210 cellphone valued at P6,900.00 belonging to Clara Bisnar y Calasara;

g) one (1) 18k gold ring with brilliantitos valued at P15,000.00 belonging to Clara Bisnar y Calasara;

h) one (1) 18k wedding ring valued at P5,000.00 belonging to Clara Bisnar y Calasara; and

i) one (1) Nokia 5110 cellphone valued at P4,500.00 belonging to Evelyn Tario;

to the damage and prejudice of the above-mentioned owners in their respective amounts, in the total amount of P289,650.00; that on the occasion of the aforesaid robbery, accused, did then and there willfully, unlawfully and feloniously attack, assault and employ personal violence and shot one Restituto Mariquit, thereby inflicting upon said Restituto Mariquit gunshot wounds on his head, which directly caused his death.

Contrary to law.

The three accused pleaded "not guilty." Thereafter, trial on the merits ensued. The facts as correctly summarized by the trial court:

Record shows that on October 12, 2001 at around 6:30 o'clock in the evening, about four men entered the office of Canscor Construction and Development Incorporation (Canscor), located at No. 29 Evangelista St., Santolan, Pasig City, and declared a hold up. At least two robbers remained outside to serve as look-outs. At

that time, five Canscor employees, namely, Clara Bisnar, Evelyn Tario, Nelia Panaga, Marlene Avellaneda and Engineer Bong dela Rosa, were inside the office preparing the pay envelopes of the employees. Clara was then reviewing the vouchers and signing checks when one of the hold-uppers, who was holding a gun and a grenade, positioned himself beside her and ordered her: "Ilabas mo ang pera." That man, whom she identified in open Court, turned out to be Accused Alejandro Sorila. The four men left after about five minutes, taking with them their loot consisting of cash and personal belongings.

Shortly after they gathered and locked themselves inside a room, the five employees heard gunshots outside the Canscor office. One Restituto Mariquit, Jr. was hit by a bullet and died.

Prosecution witness, Andres Saludsod, who, himself, was a complainant relative to the carnapping of his Tamaraw FX in the morning of October 12, 2001, identified Sorila as the same person who boarded his carnapped vehicle in Angono, Rizal and testified that the same vehicle was used to transport the robbers to Canscor and as a get-away vehicle.

Even under gruelling cross-examination, Clara was steadfast in her asseveration that she was so positioned that she was able to see clearly the face of Sorila and the gun and the grenade he was holding. She further testified that Sorila took her cell phone, wristwatch and two rings, amounting to P34,000.00 and 50.00 cash. As regards Accused Jose Balausa and Antonio Quimno, she testified that she did not know the former, while the latter left the Canscor office at 5:30 p.m., and that the next time she saw him again was the night after the hold-up.

Nelia Panaga testified that she was facing the entrance of their office and was categorical in stating that she saw Sorila enter. However, while she testified on what she witnessed happened inside the Canscor office, she admitted that she could not identify the other malefactors who held them up. She testified, though, that the robbers were able to cart away company money in the amount of P260,000.00 and her wrist watch and bracelet with a total value of P7,000.00. Upon the other hand, Evelyn Tario testified that her cell phone, valued at P4,000.00, was taken by the thieves.

Jaime Fiatos, a member of the Barangay Security Force (BSF) of Santolan, Pasig City, testified that on October 12, 2001 at about 6:30 p.m., he was inside the Barangay office when he heard Restituto Mariquit, Jr. shout, "hold- up." He looked through the door and saw a shooting incident. Then, he transferred to a place near a window from where he saw two male persons, one big and one small, firing guns towards the direction of Canscor. The big one, whom he identified in open Court, turned out to be Accused Jose Balausa. According to Fiatos, the exchange of gunfire lasted about a minute and then he saw Balausa board an FX Tamaraw. Shortly thereafter, he saw Accused Quimno being arrested and brought by his companion. He further testified that Sorila was inside a pay loader when he was arrested; that prior to the shooting incident, he saw Balausa standing outside of Canscor as a look-out and that the next time he saw him, he was firing a gun; that at the time he saw Balausa and another man standing outside of Canscor, there was light about five meters away from where Balausa and his companion were.

The defense of Sorila was that on October 12, 2001 at around 11:00 a.m., he was in the house of his aunt at Brgy. San Antonio, Angono, Rizal. According to him, he decided to go home at around 7:00 p.m. hitching a ride with his cousin, Marvin Supida, in a Tamaraw FX which was enroute to a house of a certain Antonio Tubio in Pasig City. When they reached Pasig, he was advised to alight [from] the FX and to get a ride to Marikina. But before taking a ride to Marikina, he went to a store to buy a cigarette. At that precise moment, he heard gunshots so he hid at the back of a passenger jeep. When it was already peaceful, three policemen approached him and he was ordered to lie face down. He was handcuffed and brought to a police mobile car and then to the Pasig detention cell.

As for Balausa, he claimed that on October 12, 2001, he was at their family eatery establishment from 10:00 A.M. to 6:00 P.M. and when they closed it at 7:30 P.M., he and his wife went straight home, watched T.V. and fell asleep. At about 1:00 A.M. the following day, they were awakened by a commotion and Jose was still sleeping in their room when he was grabbed, carried and handcuffed by gun-wielding men.[2]

On August 4, 2004, the Regional Trial Court of Pasig City, Branch 163, rendered a Decision,[3] the dispositive portion of which reads:

WHEREFORE, Accused ALEJANDRO SORILA JR. y SUPIDA and JOSE BALAUSA y CANTOR are hereby found GUILTY beyond reasonable doubt of the crime of Robbery with Homicide and, there being no aggravating circumstance alleged in the Information and no mitigating circumstance, are hereby sentenced to suffer the penalty of reclusion perpetua and to pay the costs.

On the civil liability of the two accused, they are ordered to pay the legal heirs of the victim, Restituto Mariquit, Jr., actual damages in the amount of P98,968.00, moral damages in the sum of P50,000.00, civil indemnity for the death of Restituto [Mariquit], Jr. also for P50,000.00 and temperate damages in the amount of P25,000.00; to pay Canscor Construction and Development Incorporation, Nelia Panaga, Clara Bisnar and Evelyn Tario actual damages in the respective sums of P250,000.00, P7,000.00, P26,950.00 and P4,000.00, respectively, all with interest thereon at the legal rate of 6% per annum from this date until fully paid.

Accused ANTONIO QUIMNO y SASOTONA is ACQUITTED on [the] ground of reasonable doubt.

SO ORDERED.[4]

On appeal, the Court of Appeals affirmed the judgment of the trial court but deleted the award of temperate damages, thus:

WHEREFORE, with the MODIFICATION that the award of P25,000.00 for temperate damages is DELETED, the challenged Decision of the Regional Trial Court of Pasig City, Branch 163, finding appellants Alejandro Sorila, Jr. and Jose Balausa GUILTY of the crime of robbery with homicide in Criminal Case No. 121877 is hereby AFFIRMED in all other respects.

SO ORDERED.[5]

Hence, this appeal.

Appellant Sorila insists that the prosecution witnesses erred in identifying him as one of the malefactors. He claims that they were susceptible to any suggestion or influence because they were in a state of shock. Consequently, when they learned that a particular person was arrested, there were more chances that they would identify the person arrested as the perpetrator of the crime.

The contention lacks merit.

Factual findings of the trial courts, including their assessment of the witness' credibility are entitled to great weight and respect by the Supreme Court particularly when the Court of Appeals affirmed such findings.[6] The Court will not alter the findings of the trial court on the credibility of witnesses because of its unique opportunity to observe the manner and demeanor of witnesses while testifying. [7] We find no cogent reason to depart from this rule.

Although the employees of Canscor Construction and Development Corporation were taken by surprise when the robbery took place, they were able to get a good look at the robbers who went inside the office. The most natural reaction of victims of violence is to strive to see the looks and faces of the malefactors and to observe the manner in which the crime was committed.[8] Most often, the face and body movements of the assailants create a lasting impression on the victims' minds which cannot be easily erased from their memory.[9] In fact, experience dictates that precisely because of the startling acts of violence committed in their presence, eyewitnesses can recall with a high degree of reliability the identities of the criminals and how at any given time, the crime has been committed by them. [10] Witnesses need not know the names of the malefactors as long as they recognize their faces. [11] What is imperative is that the witnesses are positive as to the perpetrators' physical identification from the

witnesses' own personal knowledge, as is obtaining in this case.[12]

Prosecution witness Clara Bisnar testified on direct examination, to wit:

Q Do you recall of an unusual incident that happened at about that time, 6:30 on October 12, 2001?

A Yes, Ma'am.

Q What was that untoward incident?

A At that time, I was reviewing vouchers and signing checks when I saw somebody saying, "Ilabas mo ang pera."

Q How far were you when you heard this "Ilabas mo ang pera"?

A Very near.

PROSEC. LEONARDO:

Q How near ? About an arm's length?

A Yes, Ma'am.

Q And were you able to recognize from where did that voice come from?

A Yes, Ma'am.

Q Was that a male or female?

A A male.

Q And upon hearing those words, what happened after that?

A I stopped working and turned at my left side.

Q Why did you turn to your left side?

A Because I heard a voice coming from my left side and because my place is near the side (dulo).

Q To whom were those words, "Ilabas mo ang pera," directed to?

A I don't know to whom it was directed to because we were four at that time. We were just near each other.

Q And what was the response of that person to whom the words, "Ilabas mo ang pera," was directed to?

A None, Ma'am.

Q There was no response?

A There was no response and then I turned my head when I saw the person beside me.

PROSEC. LEONARDO:

Q Who was that person beside you?

A The hold-upper. He was holding a gun and a grenade.

Q And after that happened?

A

Then, he asked me to give him the money. He asked me, "Ilabas mo ang pera." He said those words to me and then, I said, I don't have the money.

Q And after that what happened?

A He pulled out the cord of my telephone and dropped it to the floor and then my calculator.

Q And after that what happened?

A Then, after that, he asked me to open my drawer.

Q Did you open your drawer?

A Yes, Ma'am, and then he left.

Q And after that happened ?

A After that, he asked me to get the plastic bag beside me and then he checked if the money was there.

Q What money is that?

A The payroll.

Q Was there a payroll during that time?

A We were preparing the pay envelopes.

Q What about the money to be placed in the pay envelopes, where was it on October 12, 2001?

A It was with the cashier, Nelia Panaga.[13]

x x x x

Q If that person who was holding a gun and a grenade is inside the court room, will you be able to recognize him?

A Yes, Ma'am.

Q Would you kindly point to that person?

A

(Witness pointed to a person seated on a bench wearing a yellow T-shirt, whom when asked by the Court what his name is, gave his name as Alejandro Sorila).

COURT:

Q This Sorila whom you just pointed at, what was he holding?

A A gun and a grenade, Your Honor. [14]

x x x x

Q When the robbery was taking place, the four hold-uppers were there?

A Yes, Ma'am.

Q And only one of them is present in Court?

A Yes, Ma'am.

Q The one whom you identified as the one holding a gun and a grenade?

A Yes, Ma'am.[15] (Emphasis and italics supplied)

During cross-examination, despite repeated attempts by defense counsel to impeach her credibility or to throw her off track, Bisnar was unwavering in her testimony, to wit:

ATTY. LIM: (CROSS-EXAMINATION)

Q

Ms. Witness, at the time you heard somebody said, "Ilabas mo ang pera," up to the time that these persons left, how long a time would that be, more or less?

A About five (5) minutes.

Q This is the first time that you experienced that kind of situation, being robbed and being threatened to be killed?

A For myself, yes.

Q

And naturally you were shocked when you saw somebody pointing a gun and announcing a hold-up, and in fact, holding a hand grenade threatening to blast everybody including themselves?

A Yes, sir.

ATTY. LIM:

Q

And instinctively because of that fear, you hide for cover, isn't it, because this hold-upper pointed the gun right at your face and even showed you the grenade?

A (Witness demonstrated how the hold-upper positioned himself).

Q So, the right hand was holding the gun and the left hand was holding the grenade which is above his shoulder?

A Yes, Sir.

Q While the gun was leveled at your face?

A The gun was not leveled on my face because he was beside me and there was a cubicle divider.

Q Isn't it that you reacted normally by preserving yourself in this dangerous situation by raising your hands and lying on the floor?

A No, I did not because my space was so crowded (masikip).

Q

What you do is that you went out of your seat and positioned yourself inside the table in order to hide from the possible volley of gunfire or the blasting of the grenade?

A No. I cannot move because the hold-upper was on my way out. The space was so little.

ATTY. LIM:

Q And according to you, there is a divider?

A Yes, sir.

Q And that divider reaches up to the ceiling?

A No, sir.

Q Up to what extent was the divider?

A About four (4) feet.

Q

But definitely, while seating on the table of yours, you could not see who was in front of you or what was happening in front of you?

A I saw what was happening in front of me because he was just beside me. He was very near to me.

Q Because of that divider, you did not see what was in front of you in that sitting position?

A No, Sir. The divider was outside, the hold-upper was between my table and the divider and the hold-upper was inside. [16]

x x x x

Q In your affidavit, you stated that Alejandro was only holding a gun, isn't it? You did not mention anything about a grenade?

A Yes, Sir. I was still shocked at that time, that is why I was not able to tell them about the grenade.

Q

So correct me if I am wrong, you were shocked up to the time you made your statement on October 13, 2001 or precisely the day after?

A I was merely nervous.

ATTY. LIM:

Q

Was it not the statement you used a while ago that you were shocked at that time, you told the police that there was only a gun and that there was no grenade, that is why you omitted saying that there was a grenade held by Alejandro Sorila?

A I just knew then that there was a gun, then after that, a grenade.

Q

No, my question is: Wasn't that your statement just one question ago that you were shocked that was the term you used, that is why you omitted to tell them that there was a hand grenade, isn't it?

A Yes, sir.

Q

So, it is clear that even if they are there, the alleged hold-upping, you were still in a state of shock that is why you omitted the fact that Alejandro Sorila was holding a grenade and it persisted up to the second day?

A I forgot to mention that fact.

Q You were still shocked up to the second day, that is why you forgot to tell them?

A Yes, Sir.[17]

x x x x

ATTY. LIM:

Q

Could you tell us, when this person who was holding a grenade and a gun went beside you, did he tell you anything other than you heard somebody said, "Ilabas mo ang pera?"

A He also said "Ilabas mo ang pera."

Q And nothing more?

A And then he opened the drawer then he looked at the plastic beside me.

Q He said nothing more, nothing less?

A He said, "This is a hold-up, huwag kayo kikilos ng masama."

Q Did he say, "Kung hindi, papatayin kita?"

A He said that, Sir.

Q

Isn't it that in this statement, you also said, regarding the participation of the other person, that the other three persons with Sorila, according to you, were the ones who got the personal money and other items which were allegedly taken from you and your other officemates?

A There was another man.

Q In other words, these here persons, aside from the accused, you really never saw them took (sic) the items and the money?

A The second man who approached me just took my personal belongings.

ATTY. LIM:

Q So, there was another person whom you really saw?

A Yes, sir.

Q So, it is not accurate to say in this statement that you saw another one?

A

I also saw one man who took my belongings and then the other man pointing a gun at me, and then, I don't see the others who took the money from the cashier.

Q

Precisely, in other words, your answer to question No. 9 of the statement is not accurate, because according to this, you saw four persons taking the money away and the personal items away, what you really saw was only, according to you, Sorila and the other person?

A I only saw two.

Q That is why this is not a correct statement?

A Yes, sir.

x x x x

Q Could you tell us whose writing is this beside the answer?

A I wrote that, Sir.

Q How about the other side?

A Mine also, Sir.

Q You are the one who corrected this?

A Yes, sir.

ATTY. LIM:

No further questions, Your Honor.[18] (Emphasis and italics supplied)

Nelia Panaga, who was preparing the company payroll at the time, likewise identified Sorila as one of the robbers who entered the Canscor premises and divested her of personal belongings:

Q Do you remember of any unusual incident that happened during the time while you were in your office with Visnar and Tario, and other employees?

A I did not notice anything except when the holduppers arrived.

Q How many persons arrived which you described as hold uppers?

A They were four when they entered the cubicle.

Q Why did you say they were hold uppers?

A They were carrying guns.

x x x x

Q

The person who took that money which was on top of the table, the P260,000.00 if he is inside the courtroom, will you be able to point to him?

A He is not here, Ma'am.

x x x x

Q How about the other holduppers, would you recognize them?

A Only two of them, the first one who entered and the other who stood in front of me.

Q The person who stood in front of you is inside the courtroom?

A Yes, Ma'am.

Q Could you kindly point to that person?

A Yes, Ma'am.

INTERPRETER:

WITNESS POINTING TO A PERSON WEARING A LIGHT YELLOW T-SHIRT, SEATED ON THE RIGHT SIDE OF THE BENCH, WHO, WHEN ASKED BY THE COURT, STOOD UP AND GAVE HIS NAME AS ALEJANDRO SORILA.

Q What was he doing at the time when the money was being taken by the other person?

A He is also one of those who got the money.

Q What was the personal items that were taken by Sorila?

A From me, he took a wristwatch, cellphone and bracelet.

Q These were the only items which were taken from you?

A Yes, Ma'am.[19] (Emphasis and italics supplied)

Panaga remained steadfast and unyielding on cross examination:

A No, he is not the one.

Q He did not take anything?

A None, sir.

Q

The truth of the matter [is], he was the [one] who stood away from you that is why you could not really see what he was doing is it not?

A Yes, sir.

Q

The truth of the matter Mr. (sic) Witness, is because of the incident was so fast considering that it was done, more or less, 3 minutes considering that you were allegedly in a state of shock and according to you, you obeyed this person who ordered you, by looking down and not minding what is happening within the immediate vicinity, you really could not see that it was Alejandro Sorila who was one of those persons who entered the premises?

A

Because they entered the cubicle, I saw them first. The two persons who entered the cubicle, one of them is Alejandro Sorila. When they took the money, he is one of them. I tried to look on my side and in front and I saw him, so I can identify him.

Q Where did Alejandro Sorila positioned (sic) himself immediately after they entered the premises?

A When they came inside the cubicle it was so fast. They took the money and went away.

Q So you do not know where Alejandro Sorila was positioned immediately after, according to you, you saw him with another person [who] entered the premises?

A Yes, Sir.

Q You do not know his whereabouts[s]?

A All I know [is] he went to Clara Bisnar after he entered.[20] (Emphasis and italics supplied)

Positive and categorical assertions of a witness prevail over bare denial,[21] which is a negative and self serving evidence. It cannot be given greater weight than the testimony of credible witnesses who testified on affirmative matters. Between the positive declarations of the prosecution witnesses and the negative statements of the accused, the former deserve more credence." [22] To merit credibility, denial must be buttressed by strong evidence of non-culpability,[23] which is lacking in the instant case. Furthermore, settled is the rule that when there is no evidence to show any dubious reason or improper motive why the prosecution witnesses should testify falsely against the accused or implicate him in a serious offense, their testimonies deserve full faith and credit.[24]

There is no merit in appellant Balansa's claim that they cannot be convicted of robbery with homicide because no proof was presented on the matter surrounding the death of the victim and the identities of the persons who shot him; and that since the crime of homicide had not been proven, it cannot be complexed with robbery.

Article 294 (1) of the Revised Penal Code[25] classifies robbery with homicide as a crime against property[26] with the following elements: 1) the taking of personal property with the use of violence or intimidation against persons; 2) personal 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 its generic sense, was committed.[27] The intent to rob must precede the taking of human life.[28] So long as the intention of the felons was to rob, the killing may occur before, during or after the robbery.[29] 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. It is likewise not necessary to identify who among the conspirators inflicted the fatal wound on the victim.[30] 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.[31]

Balaua's attempt to impeach the credibility of prosecution witness Jaime Fiatos with regard to the latter's identification of him as one of the perpetrators of the crime is to no avail.

Balaua points out that in Fiatos' Affidavit,[32] the latter stated that Balaua acted as a lookout, while in open court, the latter declared that appellant traded gunfire with the barangay security forces; that in his Sinumpaang Salaysay,[33] Fiatos described Balaua as big and tall who sported a moustache but when he was arrested less than 24 hours after the crime was committed, and even during trial, Balaua sported black, not white, hair; that Ramil Agcaoili, a member of the barangay security force, categorically testified that he did not see Fiatos inside the barangay hall during the incident; that Agcaoili's testimony was corroborated by Romeo Santiago, another barangay security force member; that both Agcaoili and Santiago declared that Fiatos was outside and in front of the barangay hall when the shooting started; and that Andres Saludsod, Jr., whose Tamaraw FX was commandeered by the robbers in the morning of October 12, 2001 testified that he did not see Balaua on that fateful day.

Concededly, in his affidavit[34] taken at the police station on October 13, 2001, Fiatos said that Balaua was merely a lookout. A careful reading of the sworn statement, however, discloses that he also averred therein that Balaua was holding a 'short' gun:

19. t: Alam mo ba naman kun papaano napunta si Jose sa police Pasig ?

s: Ang alam ko ay nag-palo-ap ang Pasig Police at sabi nila ay nahuli nga siya (Jose) matapos ituro ni Alejandro.

20. t: Nung makita mo si Jose sa lugar ng pinangyarihan, ano ang hawak niya?

s: Maiksing baril po, kulay itim.[35] (Emphasis and italics supplied)

In his Sinumpaang Salaysay,[36] Fiatos declared that he saw Balaua and the other man acting as lookout also firing at the responding barangay security forces when they were fleeing the Canscor premises:

4.0

Kitang-kita rin ng dalawang mata ko si JOSE BALAUSA at ang kanyang kasama na nagpapaputok ng kanilang baril habang nakatayo sa nasabing lugar sa kahabaan ng Evangelista St. Nakadirekta ang mga putok ng baril nina JOSE BALAUSA sa iba pang kasapi ng barangay "Security Force" habang lumalabas ang mga kasamahan nitong nang-holdap mula sa opisina ng CANSCOR. Napagmasdan ko nang mabuti si JOSE BALAUSA at ang kasama nito habang pinapuputukan nila ng baril ang mga papalapit na sina Numeriano Ramos (a.k.a. Boy Melencio) at Restituto Marikit, parehong empleyado ng Santolan, Barangay Hall. Sa kasawiang-palad ay tinamaan ng bala si mula sa baril nina JOSE BALAUSA si Restituto Marikit na isang barangay utility man. Si Restituto Marikit ay nagtamo ng tama sa kanyang ulo at paa na naging sanhi ng pagkamatay nito makalipas ang ilang araw.[37]

From the foregoing averments, it is clear that Balaua initially served as a lookout but eventually engaged at the shoot out with the responding barangay security forces.[38] This is consistent with his testimonial declarations

which remained straightforward despite attempts by defense counsel to mislead him and impeach his credibility on cross-examination, thus:

Q Whom did you see, you said there was [a] shooting incident, whom did you see?

A Balausa and a small guy.

Q What was Balausa doing and the other guy?

A I saw him firing a gun, holding the gun with his arm stretch[ed] and I saw the muzzle of the gun lighting.

Q And this was from a distance of about 25 to 30 meters, is that correct?

A Up to that ipil-ipil tree, sir. (Witness pointing to a distance up to the ipil-ipil tree).

Q And the light was about 15 meters away from you?

A Yes, sir.

Q So, you were saying that Balausa was firing a gun?

A Yes, sir.

Q Is that the statement you gave to the police?

A Yes, sir.

Q And he was firing a gun?

A Yes, sir.

Q Now in question No. 7 the answer, it says here,

S:

xxx at ito namang si Jose ay nakita ko siya sa labas ng Canscor na kasama pa ang isang lalaki at look out naman.

T: 8 Paano mo nasabing look out itong si Jose?

S:

Dahil sa nung habang nakikipagbarilan ang mga kasama nilang holdaper sa mga security force ay nakita kong tumatakbo mula sa kanyang kinatatayuan niya sa labas ng Canscor ay pumasok sa FX na get away nila"

did you make that statement?

A Yes, sir.

Q So, in other words, you are saying that he was only a look out?

A At first I did not see him firing [the] gun but later on he was already firing.

Q But you said when you peeped at the window you saw two guys and one is Balausa who was firing a gun, the first time you saw them, is that correct?

A Yes, sir.

Q So, this now, which now is correct, this one or the earlier statement you made?

A They are the same, sir.

Q No difference at all?

A None.

Q You are confused now, whether he was a look out or fired a gun?

A The first time I saw him he was standing up but the second time I saw him he was firing a gun.

Q Are you sure that he really fired a gun?

A Yes, sir.

Q Again I will refer to your statement, in question No. 20, you said earlier that you are positive that Balausa fired a gun, is that correct?

A Yes, sir.

Q In question No. 20, which I read :

T 20 Nung Makita mo si Jose sa lugar ng pinangyarihan, ano ang hawak niya?

A: Maiksing baril po, kulay itim.

T 21 Gaano ka ba kalayo sa kaniya noon?

A: Malapit lang halos mmga sampung dipa lang po.

T 22 Nakita mo ba kung pumutok din siya?

A:

Hindi ko na nakita dahil kumubli na kami kasi nung maghagis ng granada ang isa nilang kasama.

did you make that statement?

A Yes, sir.[39] (Emphasis and italics supplied)

The issues of whether Balausa acted as a look out; or whether he fired the gun while acting as a look out; or whether he was inside or outside the barangay hall when the shooting started, refer to minor details which hardly affect the established fact that he was present and participated in the commission of the crime and was positively identified by Fatos.

Unpersuasive too is Balausa's proffered arguments on the issue of the color of his hair and moustache. This alleged inconsistency with regard to Balausa's hair color is more apparent than real considering that his hair was not entirely black because there were very visible white strands interspersed with his black hair.[40] Furthermore, if hair can be dyed in one (1) hour or less, it would take an even shorter period of time to shave a moustache.

An examination of the picture[41] taken the day after the robbery shows that Fatos' physical description of Balausa as being big and tall is, likewise, accurate because appellant is indeed heftier and taller compared to his co-accused. Andres Saludsod, Jr.'s failure to identify Balausa as one of the felons who commandeered his

Tamaraw FX does not negate the fact that Fiatos was able to identify Balausa. It should be pointed out that Saludsod was forced to wear sunglasses with covered lenses to prevent him from identifying the other malefactors who seized his vehicle.[42] The other witnesses who identified appellant Sorila, notably Clara Bisnar and Nelia Panaga, were inside the Canscor office and held at gunpoint by Sorila and his companions who barged into the premises, while Balausa and the other smaller man remained outside the premises. They, thus, could not have identified Balausa.

The testimony of a single eyewitness, if found to be positive and credible by the trial court, is sufficient to support a conviction,[43] especially when it bears the earmarks of truth and sincerity and was delivered spontaneously, naturally and in a straightforward manner.[44] Indeed, the testimony of a single witness when found sufficient needs no corroboration, save only where the law expressly prescribes a minimum number of witnesses.[45] Errorless testimonies can hardly be expected especially when a witness is recounting the details of a harrowing experience. As long as the mass of testimony jibes on material points, the slight clashing of statements dilute neither the witnesses' credibility nor the veracity of their testimonies. Such inconsistencies on minor details would even enhance credibility as these discrepancies indicate that the responses are honest and unrehearsed." [46] The Court has consistently ruled that the alleged inconsistencies between the testimony of a witness in open court and his sworn statement before the investigators are not fatal defects to justify the reversal of a judgment of conviction.[47]

Moreover, affidavits taken ex parte are considered incomplete and often inaccurate - they are the products of sometimes partial suggestions, at other times of want of suggestions and inquiries, without the aid of which witnesses may be unable to recall the connected circumstances necessary for accurate recollection.[48] Extrajudicial statements like affidavits are generally not prepared by the affiant himself but by another who uses his own language in writing the affiant's statement, hence, omissions and misunderstandings by the writer are not infrequent.[49] It is of judicial knowledge that sworn statements are almost incomplete, often inaccurate and generally inferior to the testimony of a witness in open court. [50] Thus, whenever there is an inconsistency between an affidavit and the testimony of a witness, the testimony commands greater weight.[51]

With regard to amounts taken by the robbers from Canscor and its employees, Balausa insists there is no proof that the sum taken from Canscor was P250,000.00. He points out that while the information alleged that the amount of money taken was P250,000.00, Clara Bisnar testified that what was taken was P344,144.00 while Nelia Panaga averred that the sum taken by the robbers was P260,000.00. In the case of Bisnar, the trial court made a finding that the total value of money and valuables taken from her was P26,950.00 as alleged in the information but she testified that the total value personally taken from her was P34,000.00.

These alleged discrepancies are unconvincing because the prosecution was able to prove that appellants and their cohorts divested Canscor of P260,000.00 representing its payroll money. Nelia Panaga, cashier of Canscor, averred that the P260,000.00 payroll money was on top of her table when it was seized by the robbers.[52] The seemingly contradictory testimony of Clara Bisnar, Canscor Vice-President for Finance,[53] that the money taken was P344,144.00[54] can be reconciled with the account of Panaga that at the time of the robbery, the available funds was indeed P344,144.00[55] consisting of the payroll money amounting to P260,000.00 taken on top her table, but there was P80,000.00 on the left side of her table inside a box and another P4,000.00 inside the drawer.[56]

Every person criminally liable for a felony is also civilly liable.[57] When death occurs due to a crime, the following damages may be awarded: 1) civil indemnity ex delicto for the death of the victim; 2) actual or compensatory damages; 3) moral damages; 4) exemplary damages and 5) temperate damages.[58] In cases of murder and homicide, civil indemnity of P50,000.00 and moral damages of P50,000.00 are awarded

automatically.[59] Indeed, such awards are mandatory without need of allegation and proof other than the death of the victim[60] owing to the fact of the commission of murder or homicide. [61]

To be entitled to actual damages, it is necessary to prove the actual amount of loss with a reasonable degree of certainty, premised upon competent proof and the best evidence obtainable to the injured party.[62] Thus, the actual damages of P98,698.00 awarded to the heirs of Restituto Marikit should be sustained as the same is duly supported by receipts.[63] Such being the case, the award of temperate damages became superfluous and was correctly deleted by the Court of Appeals.

WHEREFORE, the petition is DENIED. The Decision of the Court of Appeals dated October 12, 2006 affirming with modification the Decision of the Regional Trial Court of Pasig City, Branch 163, finding appellants guilty of robbery with homicide and sentencing them to suffer the penalty of reclusion perpetua, is AFFIRMED.

SO ORDERED.

Austria-Martinez, Chico-Nazario, Nachura, and Reyes., JJ., concur.

[1] CA rollo, pp. 6-8.

[2] Id. at 87-89.

[3] Id. at 86-90; penned by Judge Leili Suarez Acebo.

[4] Id. at 89-90.

[5] Id. at 13.

[6] People v. Aguila , G.R. No. 171017, December 10, 2006, 510 SCRA 642, 661.

[7] Comilang v. Burcena, G.R. No. 146853, February 13, 2006, 482 SCRA 342, 352.

[8] People v. Oco , 458 Phil. 815, 844 (2003).

[9] People v. Balonzo, G.R. No. 176153, September 21, 2007, 533 SCRA 760, 773.

[10] People v. Gallego, 453 Phil. 825, 846 (2003); People v. Caraang, 463 Phil. 715, 744 (2003).

[11] People v. Togahan, G.R. No. 174064, June 8, 2007, 524 SCRA 557, 571.

[12] Id.

[13] TSN, January 15, 2002, pp. 4-7.

[14] Id. at 8.

[15] Id. at 13.

[16] Id. at 14-16.

[17] Id. at 17-19.

[18] Id. at 21-23.

[19] TSN, January 29, 2002, pp. 9-11.

[20] Id. at 19-20.

- [21] *People v. Ruales*, 457 Phil. 161, 173 (2003); *People v. Corral*, 446 Phil. 652, 665 (2003).
- [22] *People v. Malicsi*, G.R. No. 175833, January 29, 2008.
- [23] *People v. Alfon*, 447 Phil. 138, 147 (2003).
- [24] *People v. Degamo*, 450 Phil. 159, 175 (2003); *People v. Caritativo*, 451 Phil. 741, 762 (2003).
- [25] Article 294. Robbery with violence against or intimidation of persons. - Penalties. - Any person guilty of robbery with the use of violence or intimidation of any person shall suffer:
1. The penalty of from reclusion perpetua to death, when by reason or occasion of the robbery, the crime of homicide shall have been committed.
- [26] *People v. Solamillo*, 452 Phil. 261, 275 (2003).
- [27] *People v. Lara*, G.R. No. 171449, October 23, 2006, 505 SCRA 137, 153.
- [28] *Id.*
- [29] *People v. Escote*, 448 Phil. 749, 783-784 (2003).
- [30] *People v. Lozada*, 454 Phil. 241, 254 (2003).
- [31] *People v. Cabbab, Jr.*, G.R. No. 173479, July 12, 2007, 527 SCRA 589, 604.
- [32] *Records*, pp. 10-11.
- [33] *Id.* at 349-350.
- [34] *Id.* at 10-11.
- [35] *Id.* at 11.
- [36] *Id.* at 349.
- [37] *Id.*
- [38] *TSN*, September 17, 2002, pp. 5-9.
- [39] *Id.* at 25-28.
- [40] *Id.* at 29-30.
- [41] *Exhibit Q and Q-1; Record*, p. 280.
- [42] *TSN*, December 18, 2001, pp. 7, 14, 23.
- [43] *Nerpio v. People*, G.R. No. 155153, July 24, 2007, 528 SCRA 93, 102.
- [44] *People v. Galano*, 384 Phil. 206, 216 (2000).
- [45] *Ocampo v. People*, G.R. No. 163705, July 30, 2007, 528 SCRA 547, 558.
- [46] *People v. Alabado*, G.R. No. 176267, September 3, 2007, 532 SCRA 189, 208.
- [47] *People v. Beltran*, G.R. No. 168051, September 27, 2006, 503 SCRA 715, 729.
- [48] *Maturillas v. People*, G.R. No. 163217, April 18, 2006, 487 SCRA 273, 302-303.

- [49] *People v. Astudillo*, 449 Phil. 778, 790-791 (2003).
- [50] *Leyson v. Lawa*, G.R. No. 150756, October 11, 2006, 504 SCRA 147, 161.
- [51] *People v. Dela Cruz*, 446 Phil. 549, 571 (2003).
- [52] TSN, January 29, 2002, p. 10.
- [53] TSN, January 15, 2002, p. 3.
- [54] *Id.* at 7.
- [55] TSN, January 29, 2002, p. 10.
- [56] *Id.*
- [57] *People v. Abesamis*, G.R. No. 140985, August 28, 2007, 531 SCRA 300.
- [58] *People v. Ducabo*, G.R. No. 175594, September 28, 2007, 534 SCRA 458, 476.
- [59] *People v. Mondigo*, G.R. No. 167954, January 31, 2008.
- [60] *People v. Bajar*, 460 Phil. 683, 700 (2003).
- [61] *Razon v. People*, G.R. No. 158053, June 21, 2007, 525 SCRA 284, 303.
- [62] *Martinez v. Court of Appeals*, G.R. No. 168827, April 13, 2007, 521 SCRA 176, 205.
- [63] Exhibits K to K-29; Record, p. 214.

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