

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. MARLON ALBERT DE LEON Y HOMO, APPELLANT.

G.R. No. 179943. June 26, 2009

Ponente: PERALTA, J.

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PERALTA, J.:

This is an appeal from the Decision[1] of the Court of Appeals (CA), affirming with modification the Decision[2] of the Regional Trial Court (RTC), Branch 76, San Mateo, Rizal, finding appellant Marlon Lambert De Leon y Homo guilty beyond reasonable doubt of the crime of robbery with homicide.

The factual and procedural antecedents are as follows:

According to the prosecution, in the early morning, around 2 o'clock of January 7, 2000, Eduardo Zulueta and Fortunato Lacambra III, both gasoline boys; Julieta Amistoso, cashier; and Edralin Macahis, security guard; all employees of Energex Gasoline Station, located at Barangay Guinayan, San Mateo, Rizal, were on duty when a mint green-colored Tamaraw FX arrived for service at the said gasoline station.[3]

Eduardo Zulueta was the one who attended to the said vehicle. He went to the driver's side in order to take the key of the vehicle from the driver so that he could open the gas tank. He saw through the lowered window shield that there were about six to seven persons aboard the vehicle. He proceeded to fill up P50.00 worth of diesel in the gas tank. After doing this, he returned the key to the driver. While returning the key, the driver told him that the engine of the vehicle would not start.[4] Eduardo Zulueta offered to give the vehicle a push. While Eduardo Zulueta and fellow gasoline boy Fortunato Lacambra III were positioned at the back of the vehicle, ready to push the same, the six male passengers of the same vehicle, except the driver, alighted and announced a hold-up. They were armed with a shotgun and .38 caliber pistol.[5]

Fortunato Lacambra III was ordered to lie down,[6] while Eduardo Zulueta was directed to go near the Car Wash Section.[7] At that instance, guns were poked at them.[8]

Appellant, who guarded Eduardo Zulueta, poked a gun at the latter and took the latter's wallet containing a pawnshop ticket and P50.00, while the companion of the former, hit the latter on his nape with a gun.[9]

Meanwhile, four members of the group went to the cashier's office and took the money worth P3,000.00.[10] Those four robbers were also the ones who shot Edralin Macahis in the stomach.[11] Thereafter, the same robbers took Edralin Macahis' service firearm.[12]

After he heard successive gunshots, Eduardo Zulueta saw appellant and his companions immediately leave the place.[13] The robbers boarded the same vehicle and proceeded toward San Mateo, Rizal.[14] When the robbers left, Eduardo Zulueta stood up and found Julieta Amistoso, who told him that the robbers took her bag and jewelry. He also saw that Edralin Macahis had a gunshot wound in the stomach. He immediately hailed a vehicle which transported the injured Edralin Macahis to the hospital.[15] Later on, Edralin Macahis died at the hospital due to the gunshot wound.[16]

The following day, Eduardo Zulueta identified appellant as one of the robbers who poked a gun at him.[17]

However, according to appellant, from January 4 to 6, 2000, he stayed at the house of his Tita Emma at Pantok, Binangonan, Rizal, helping the latter in her canteen. On the evening of January 6, at approximately 9 o'clock, appellant asked permission from his Tita Emma to go to Antipolo. Catherine Homo, appellant's cousin and the latter's younger brother, accompanied appellant to the terminal. While waiting for a ride, the vehicle, a Tamaraw FX, of a certain Christian Gersalia, a relative of appellant and Catherine Homo, passed by. Catherine Homo asked Christian Gersalia if he would allow appellant to hitch a ride on his vehicle. Christian Gersalia agreed. Aside from Christian Gersalia, there were other passengers in the said vehicle.[18]

When the vehicle reached Masinag, where appellant was supposed to alight, he was not allowed to do so; instead, he was asked by the other passengers to join them in their destination. While on the road, appellant fell asleep. When he woke up, they were in a gasoline station. He then saw Christian Gersalia and the other passengers conducting a hold-up. He never left the vehicle and was not able to do anything because he was overwhelmed with fear. After he heard the gunshots, Christian Gersalia and the other passengers went to the vehicle and proceeded towards Marikina. On their way, they were followed by policemen who fired at them. The other passengers fired back at the policemen. It was then that the vehicle hit a wall prompting the other passengers to scamper in different directions leaving him behind. When the policemen arrived, he was immediately arrested.[19]

As a result of the above incident, four Informations for Robbery with Homicide were filed against appellant, Rudy Gersalia, Christian Gersalia, Dondon Brenvuela, Jonathan Brenvuela, Pantoy Servantes, an alias "Rey," an alias "Jonard," an alias "Precie," and an alias "Renato," which read as:

Criminal Case No. 4747

That on or about the 7[th] day of January 2000, in the Municipality of San Mateo, Province of Rizal, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together with Rudy Gersalia, Christian Gersalia, Dondon Brenvuela, Jonathan Brenvuela, Pantoy Servantes, Alias "Rey," Alias "Jonard," Alias "Precie" and Alias "Renato" whose true names, identities and present whereabouts are still unknown and still at-large, and conspiring and mutually helping and assisting one another, while armed with unlicensed firearms and acting as a band, with intent of gain with aggravating circumstances of treachery, abuse of superior strength and using disguise, fraud or craft and taking advantage of nighttime, and by means of motor vehicle and by means of force, violence and intimidation, employed upon ENERGEX GASOLINE STATION, owned by Regino C. Natividad, and represented by Macario C. Natividad, did then and there willfully, unlawfully and feloniously rob, steal and carry away its cash earnings worth P3,000.00, to the damage and prejudice of said Energex Gasoline Station in the aforesaid amount of P3,000.00 and on the occasion of the said robbery, the above-named accused, while armed with unlicensed firearms with intent to kill, conspiring and confederating together with Rudy Gersalia, Christian Gersalia, Dondon Brenvuela, Jonathan Brenvuela, Pantoy Servantes, Alias "Rey," Alias "Jonard," Alias "Precie" and Alias "Renato," whose true names, identities and present whereabouts are still unknown and still at-large, did then and there willfully, unlawfully and feloniously attack, assault and shoot one EDRALIN MACAHIS, a Security Guard of Energex Gasoline Station, thereby inflicting upon him gunshot wound on his trunk which directly caused his death.

Contrary to law.

Criminal Case No. 4748

That on or about the 7[th] day of January 2000 in the Municipality of San Mateo, Province of Rizal, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and

confederating , together with Rudy Gersalia, Christian Gersalia, Dondon Brenvuela, Jonathan Brenvuela, Pantoy Servantes, Alias "Rey," Alias "Jonard," Alias " Precie" and Alias "Renato," whose true names, identities and present whereabouts are still unknown and still at-large and conspiring and mutually helping and assisting one another, while armed with unlicensed firearms and acting as a band, with intent of gain, with aggravating circumstances of treachery, abuse of superior strength and using disguise, fraud or craft and taking advantage of nighttime, and by means of a motor vehicle and by means of force, violence and intimidation, employed upon the person of JULIETA A. AMISTOSO, the Cashier of Energex Gasoline Station, did then and there willfully, unlawfully and feloniously rob, steal and carry away the following, to wit:

- a) One (1) ladies ring with sapphire stone valued at P1,500.00
- b) One (1) Omac ladies wristwatch valued at P2,000.00
- c) Guess black bag valued at P500.00
- d) Leather wallet valued at P150.00
- e) White T-Shirt valued at P175.00

to her damage and prejudice in the total amount of P4,325.00 and on the occasion of the said robbery, the above-named accused while armed with unlicensed firearms with intent to kill, conspiring and confederating together with Rudy Gersalia, Christian Gersalia, Dondon Brenvuela, Jonathan Brenvuela, Pantoy Servantes, Alias "Rey," Alias "Jonard," Alias "Precie" and Alias "Renato," whose true names, identities and present whereabouts are still unknown and still at-large, did then and there willfully, unlawfully and feloniously attack, assault and shoot one EDRALIN MACAHIS, a Security Guard of Energex Gasoline Station, thereby inflicting upon him gunshot wound on his trunk which directly caused his death.

Contrary to law.

Criminal Case No. 4749

That on or about the 7[th] day of January 2000, in the Municipality of San Mateo, Province of Rizal, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together with Rudy Gersalia, Christian Gersalia, Dondon Brenvuela, Jonathan Brenvuela, Pantoy Servantes, Alias "Rey," Alias "Jonard," Alias "Precie" and Alias "Renato," whose true names, identities and present whereabouts are still unknown and still at-large, and conspiring and mutually helping and assisting one another, while armed with unlicensed firearms and acting as a band, with intent of gain, with aggravating circumstances of treachery, abuse of superior strength and using disguise, fraud or craft and taking advantage of nighttime, and by means of a motor vehicle and by means of force, violence and intimidation, employed upon EDRALIN MACAHIS, a Security Guard of Energex Gasoline Station, did then and there willfully, unlawfully and feloniously rob, steal, and carry away his service firearm .12 gauge shotgun with serial number 13265 valued at P12,000.00 owned by Alert and Quick (A-Q) Security Services Incorporated represented by its General Manager Alberto T. Quintos to the damage and prejudice of said Alert and Quick (A-Q) Security Services Incorporated in the aforesaid amount of P12,000.00 and on the occasion of the said robbery the above-named accused, while armed with unlicensed firearms, with intent to kill conspiring and confederating together with Rudy Gersalia, Christian Gersalia, Dondon Brenvuela, Jonathan Brenvuela, Pantoy Servantes, Alias "Rey", Alias "Jonard", Alias " Precie" and Alias "Renato", whose true names, identities and present whereabouts are still unknown and still at-large, did then and there willfully, unlawfully and feloniously attack, assault and shoot one EDRALIN MACAHIS, thereby inflicting upon him gunshot wound on his trunk which directly caused his death.

Contrary to law.

Criminal Case No. 4750

That on or about the 7[th] day of January 2000, in the Municipality of San Mateo, Province of Rizal, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and

confederating together with Rudy Gersalia, Christian Gersalia, Dondon Brenvuela, Jonathan Brenvuela, Pantoy Servantes, Alias "Rey," Alias "Jonard," Alias "Precie" and Alias "Renato," whose true names, identities and present whereabouts are still unknown and still at-large and conspiring and mutually helping and assisting one another, while armed with unlicensed firearms and acting as a band, with intent of gain, with aggravating circumstances of treachery, abuse of superior strength and using disguise, fraud or craft and taking advantage of nighttime, and by means of a motor vehicle and by means of force, violence and intimidation, employed upon the person of EDUARDO ZULUETA, a gasoline boy of Energex Gasoline Station, did then and there willfully, unlawfully and feloniously rob, steal and carry away the following to wit:

a) Pawnshop Ticket from M. Lhuiller Pawnshop for one (1) black Citizen men's watch (automatic) valued at P2,000.00

b) Cash money worth P50.00

to his damage and prejudice in the total amount of P2,050.00 and on the occasion of the said robbery, the above-named accused, while armed with unlicensed firearms with intent to kill, conspiring and confederating together with Rudy Gersalia, Christian Gersalia, Dondon Brenvuela, Jonathan Brenvuela, Pantoy Servantes, Alias "Rey," Alias "Jonard," Alias "Precie" and Alias "Renato," whose true names, identities and present whereabouts are still unknown and still at-large, did then and there willfully, unlawfully and feloniously attack, assault and shoot one EDRALIN MACAHIS, a Security Guard of Energex Gasoline Station, thereby inflicting upon him gunshot wound on his trunk which directly caused his death.

Contrary to law.

Upon arraignment on March 23, 2000, appellant, with the assistance of counsel de parte, entered a plea of not guilty on all the charges. Thereafter, trial on the merits ensued.

The prosecution presented five witnesses, namely: Macario C. Natividad,[20] then officer-in-charge of Energex Gasoline Station where the incident took place; Edito Macahis,[21] a cousin of the deceased security guard Edralin Macahis; Fortunato Lacambra III,[22] a gasoline boy of the same gas station; Eduardo Zulueta,[23] also a gasoline boy of the same gas station, and Alberto Quintos,[24] general manager of Alert and Quick Security Services, Inc., where the deceased security guard was employed.

The defense, on the other hand, presented two witnesses, namely: Catherine Homo,[25] a cousin of appellant and the appellant[26] himself.

On December 20, 2001, the RTC rendered its Decision[27] convicting appellant beyond reasonable doubt of all the charges against him, the dispositive portion of which reads:

- In Criminal Case No. 4747, finding accused Marlon Albert de Leon y Homo guilty beyond reasonable doubt of the crime of Robbery with Homicide, as defined and penalized under No. 1 of Art. 294 of the Revised Penal Code, as amended by Sec. 9 of R.A. 7659, in relation to Sec. 1 of P.D. 1866, as further amended by Sec. 1 of R.A. 8294, having acted in conspiracy with other malefactors who have, to date, remained at-large, and sentencing the said Marlon Albert de Leon y Homo to the penalty of Death, taking into consideration the use of an unlicensed firearm in the commission of the crime as an aggravating circumstance; to pay Energex Gasoline Station owned by Regino Natividad and represented by Macario C. Natividad the amount of P3,000.00 as compensatory damages and to pay the costs;

- In Crim. Case No. 4748, finding accused Marlon Albert de Leon y Homo guilty beyond reasonable doubt of the crime of Robbery with Homicide, as defined and penalized under No. 1 of Art. 294 of the Revised Penal Code, as amended by Sec. 9 of R.A. 7659, in relation to Sec. 1 of P.D. 1866, as further amended by Sec. 1 of R.A. 8294, having acted in conspiracy with other malefactors who have, to date, remained at-large, and sentencing the said Marlon Albert de Leon y Homo to the penalty of Death, taking into consideration the use of

an unlicensed firearm in the commission of the crime as an aggravating circumstance, and to pay the costs;

- In Crim. Case No. 4749, finding accused Marlon Albert de Leon y Homo guilty beyond reasonable ground of the crime of Robbery with Homicide, as defined and penalized under No. 1 of Art. 294 of the Revised Penal Code, as amended by Sec. 9 of R.A. 7659, in relation to Sec. 1 of P.D. 1866, as further amended by Sec. 1 of R.A. 8294, having acted in conspiracy with other malefactors who have, to date, remained at-large, and sentencing the said Marlon Albert de Leon y Homo to the penalty of Death, taking into consideration the use of an unlicensed firearm in the commission of the crime as an aggravating circumstance; to indemnify the heirs of Edralin Macahis in the amount of P50,000.00 as death indemnity; to pay P12,000.00 as compensatory damages for the stolen service firearm if restitution is no longer possible and P50,000.00 as moral damages, and to pay the costs;

- In Crim. Case No. 4750, finding accused Marlon Albert de Leon y Homo guilty beyond reasonable doubt of the crime of Robbery with Homicide, as defined and penalized under No. 1 of Art. 294 of the Revised Penal Code, as amended by Sec. 9 of R.A. 7659, in relation to Sec. 1 of P.D. 1866, as further amended by Sec. 1 of R.A. 8294, having acted in conspiracy with other malefactors who have, to date, remained at-large, and sentencing the said Marlon Albert de Leon y Homo to the penalty of Death, taking into consideration the use of an unlicensed firearm in the commission of the crime as an aggravating circumstance and to pay Eduardo Zulueta, victim of the robbery, in the amount of P2,050.00 as compensatory damages for the stolen properties if restitution is no longer possible and to pay the costs.

As against accused Rudy Gersalia and Christian Gersalia, who have, to date, remained at-large, let a warrant of arrest be issued against them and let these cases be, in the meantime, sent to the archives without prejudice to their reinstatement upon apprehension of the said accused.

As against accused Dondon Brenvuela, Jonathan Brenvuela, Pantoy Servantes, Alias "Rey," Alias "Jonard," Alias "Precie and Alias "Renato," whose true names, identities and present whereabouts are still unknown and are still at-large, let these cases be, in the meantime, sent to the archives without prejudice to their reinstatement upon the identification and apprehension of the said accused.

SO ORDERED.

The cases were appealed to this Court, however, on September, 21, 2004,[28] in conformity with the Decision dated July 7, 2004 in G.R. Nos. 147678-87 entitled *The People of the Philippines v. Efren Mateo y Garcia*, modifying the pertinent provisions of the Revised Rules of Criminal Procedure, more particularly Sections 3 and 10 of Rule 125 and any other rule insofar as they provide for direct appeals from the RTCs to this Court in cases where the penalty imposed is death, reclusion perpetua or life imprisonment, as well as the Resolution of this Court, en banc dated September 19, 1995, in "Internal Rules of the Supreme Court" in cases similarly involving the death penalty, pursuant to the Court's power to promulgate rules of procedure in all courts under Article VII, Section 5 of the Constitution, and allowing an intermediate review by the CA before such cases are elevated to this Court. This Court transferred the cases to the CA for appropriate action and disposition.

The CA, on June 29, 2007,[29] affirmed with modification, the Decision of the RTC, with the dispositive portion reading:

WHEREFORE, the appealed decision is AFFIRMED with MODIFICATION. Accused Marlon Albert de Leon y Homo is hereby found guilty beyond reasonable doubt of the crime of Robbery with Homicide of only one count.

Given the passage of Republic Act 9346 which took effect on 24 June 2006, the penalty imposed upon Marlon de Leon y Homo is hereby reduced or commuted to reclusion perpetua.

SO ORDERED.

On December 10, 2007, this Court accepted the appeal,[30] the penalty imposed being reclusion perpetua.

The Office of the Solicitor General (OSG), on February 8, 2008, filed its Manifestation and Motion In Lieu of the Supplemental Brief[31] dated February 4, 2008 stating that it will no longer file a supplemental brief, considering that appellant has not raised any new issue that would require the filing of a supplemental brief.

Appellant filed a Manifestation[32] on February 22, 2008 stating that he re-pleads and adopts his Appellant's Brief and Reply Brief as Supplemental Brief.

Appellant, in his Brief,[33] assigned the following errors:

I

THE TRIAL COURT GRAVELY ERRED IN FINDING ACCUSED-APPELLANT A CO-CONSPIRATOR IN THE COMMISSION OF THE CRIME CHARGED DESPITE THE FAILURE OF THE PROSECUTION TO PROVE THE SAME AND GUILT BEYOND REASONABLE DOUBT.

II

ON THE ASSUMPTION THAT ACCUSED-APPELLANT IS GUILTY OF ROBBERY WITH HOMICIDE, THE TRIAL COURT GRAVELY ERRED IN IMPOSING FOUR (4) DEATH PENALTIES DESPITE THAT THE CRIME CHARGED WAS PRODUCED BY ONE SINGLE ACT WHICH SHOULD BE METED WITH A SINGLE PENALTY.

The OSG, in its Appellee's Brief,[34] insisted that all the elements of the crime and the appellant's participation in the crime had been established.

Appellant, in his Reply Brief,[35] argued that the penalty should not be death, but only reclusion perpetua, because the aggravating circumstance of use of unlicensed firearm, although alleged in the Information, was not alleged with specificity.

Article 294, paragraph 1 of the Revised Penal Code provides:

Art. 294. Robbery with violence against or intimidation of persons - Penalties. - Any person guilty of robbery with the use of violence against or 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.

In *People v. De Jesus*,[36] this Court had exhaustively discussed the crime of robbery with homicide, thus:

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

- (1) the taking of personal property is committed with violence or intimidation against persons;
- (2) the property taken belongs to another;
- (3) the taking is *animo lucrandi*; and
- (4) by reason of the robbery or on the occasion thereof, homicide is committed.[37]

In robbery with homicide, the original criminal design of the malefactor is to commit robbery, with homicide perpetrated on the occasion or by reason of the robbery.[38] The intent to commit robbery must precede the taking of human life.[39] The homicide may take place before, during or after the robbery. It is only the result obtained, without reference or distinction as to the circumstances, causes or modes or persons intervening in the commission of the crime that has to be taken into consideration.[40] There is no such felony of robbery

with homicide through reckless imprudence or simple negligence. The constitutive elements of the crime, namely, robbery with homicide, must be consummated.

It is immaterial that the 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, or that aside from the homicide, rape, intentional mutilation, or usurpation of authority, is committed by reason or on the occasion of the crime. Likewise immaterial is the fact that the victim of homicide is one of the robbers; the felony would still be robbery with homicide. Once a homicide is committed by or on the occasion of the robbery, the felony committed is robbery with homicide. All the felonies committed by reason of or on the occasion of the robbery are integrated into one and indivisible felony of robbery with homicide. The word "homicide" is used in its generic sense. Homicide, thus, includes murder, parricide, and infanticide.

Intent to rob is an internal act, but may be inferred from proof of violent unlawful taking of personal property. When the fact of asportation has been established beyond reasonable doubt, conviction of the accused is justified even if the property subject of the robbery is not presented in court. After all, the property stolen may have been abandoned or thrown away and destroyed by the robber or recovered by the owner.[41] The prosecution is not burdened to prove the actual value of the property stolen or amount stolen from the victim. Whether the robber knew the actual amount in the possession of the victim is of no moment, because the motive for robbery can exist regardless of the exact amount or value involved.[42]

When homicide is committed by reason or on the occasion of robbery, all those who took part as principals in the robbery would also be held liable as principals of the single and indivisible felony of robbery with homicide, although they did not actually take part in the killing, unless it clearly appears that they endeavored to prevent the same.[43]

If a robber tries to prevent the commission of homicide after the commission of the robbery, he is guilty only of robbery and not of robbery with homicide. All those who conspire to commit robbery with homicide are guilty as principals of such crime, although not all profited and gained from the robbery. One who joins a criminal conspiracy adopts the criminal designs of his co-conspirators and can no longer repudiate the conspiracy once it has materialized.[44]

Homicide is said to have been committed by reason or on the occasion of robbery if, for instance, it was 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 in the commission of the crime. As long as there is a nexus between the robbery and the homicide, the latter crime may be committed in a place other than the situs of the robbery.

From the above disquisition, the testimonies of the witnesses, and pieces of evidence presented by the prosecution, the crime of robbery with homicide was indeed committed. There was no mistaking from the actions of all the accused that their main intention was to rob the gasoline station and that on occasion of such robbery, a homicide was committed. The question now is whether there was conspiracy in the commission of the crime. According to appellant, the prosecution failed to prove that he was a co-conspirator. However, this Court finds no merit to appellant's argument.

If it is proved that two or more persons aimed by their acts towards the accomplishment of the same unlawful object, each doing a part so that their combined acts, though apparently independent, were in fact connected and cooperative, indicating a closeness of personal association and a concurrence of sentiment, a conspiracy may be inferred though no actual meeting among them to concert means is proved. That would be termed an implied conspiracy.[45] The prosecution was able to prove the presence of an implied conspiracy. The witnesses were able to narrate in a convincing manner, the circumstances surrounding the commission of the robbery and positively identified appellant as one of the robbers. Witness Eduardo Zulueta testified that appellant was one of

the robbers who poked a gun at him, thus:

Q.

Were you able to identify those two armed male persons who poked their guns at you?

A:

Yes, sir.

Q:

Kindly look around inside this courtroom and inform the Hon. Court whether those two (2) persons who poked their guns at you were (sic) present now?

A:

Only one, sir, and there he is.

(At this juncture, witness pointing to a certain person who answered by the name of MARLON ALBERT DE LEON when asked.)

Q:

This Marlon De Leon was he the one who guarded you in the carwash or not?

A:

Yes, sir.

Q:

Now, what happened to you at the carwash where this Marlon De Leon was guarding you?

A:

His gun was poked at me, sir.

Q:

What else transpired, Mr. Witness, or what else happened to you aside from that?

A:

He hit me with his gun on my nape, sir.

Q:

What else, Mr. Witness?

A:

He got my wallet from my pocket, sir.

Q:

Who hit you with a gun?

A:

His other companion, sir.[46]

Appellant was also identified by witness Fortunato Lacambra III, thus:

Q:

What about that person who ordered Zulueta to go to the carwash section and hit him, was he also armed?

A:

Yes, sir.

Q:

What kind of firearm was he carrying then?

A:

Also .38 caliber, sir.

Q:

Were you able to identify or recognize that person who approached and ordered Zulueta to go to the carwash section?

A:

Yes, sir.

Q:

If that person is inside the courtroom, will you be able to identify him?

A:

Yes, sir.

Q:

Kindly point to him?

A:

That man, sir. (Witness pointed to a person who answered by the name of Marlon Albert de Leon).[47]

Therefore, it can be inferred from the role appellant played in the commission of the robbery, that a conspiracy existed and he was part of it. To be a conspirator, one need not participate in every detail of the execution; he need not even take part in every act or need not even know the exact part to be performed by the others in the execution of the conspiracy. Each conspirator may be assigned separate and different tasks which may appear unrelated to one another but, in fact, constitute a whole collective effort to achieve their common criminal objective.[48] Once conspiracy is shown, the act of one is the act of all the conspirators. The precise extent or modality of participation of each of them becomes secondary,[49] since all the conspirators are principals.

As to the credibility of the witnesses, the RTC's findings must not be disturbed. The well-settled rule in this jurisdiction is that the trial court's findings on the credibility of witnesses are entitled to the highest degree of respect and will not be disturbed on appeal without any clear showing that it overlooked, misunderstood or misapplied some facts or circumstances of weight or substance which could affect the result of the case.[50]

For his defense, appellant merely denied participating in the robbery. However, his presence during the commission of the crime was well-established as appellant himself testified as to the matter. Granting that he was

merely present during the robbery, his inaction does not exculpate him. To exempt himself from criminal liability, a conspirator must have performed an overt act to dissociate or detach himself from the conspiracy to commit the felony and prevent the commission thereof.[51] Appellant offered no evidence that he performed an overt act neither to escape from the company of the robbers nor to prevent the robbery from taking place. His denial, therefore, is of no value. Courts generally view the defenses of denial and alibi with disfavor on account of the facility with which an accused can concoct them to suit his defense. As both evidence are negative and self-serving, they cannot attain more credibility than the testimonies of prosecution witnesses who testify clearly, providing thereby positive evidence on the various aspects of the crime committed.[52]

Consequently, the CA was correct in ruling that appellant was guilty only of one count of robbery with homicide. In the crime of robbery with homicide, there are series of acts, borne from one criminal resolution, which is to rob. As decided[53] by the Court of Appeals:

A continued (continuous or continuing) crime is defined as a single crime, consisting of a series of acts but all arising from one criminal resolution.[54] Although there is a series of acts, there is only one crime committed; hence, only one penalty shall be imposed.[55]

In the case before Us, [appellant] and his companions intended only to rob one place; and that is the Energex gasoline station. That they did; and in the process, also took away by force the money and valuables of the employees working in said gasoline station. Clearly inferred from these circumstances are the series of acts which were borne from one criminal resolution. A continuing offense is a continuous, unlawful act or series of acts set on foot by a single impulse and operated by an unintermittent force, however long a time it may occupy.[56] This can be said of the case at hand.

Akin to the extant case is that of *People v. De la Cruz*,[57] wherein the robbery that took place in several houses belonging to different persons, when not absolutely unconnected, was held not to be taken as separate and distinct offenses. They formed instead, component parts of the general plan to despoil all those within the vicinity. In this case, the Solicitor General argued that the [appellant] had committed eight different robberies, because the evidence shows distinct and different acts of spoilation in different houses, with several victimized persons.[58] The Highest Tribunal, however, ruled that the perpetrated acts were not entirely distinct and unconnected from one another.[59] Thus, the single offense or crime.

Now, this Court comes to the penalty imposed by the CA. The decision[60] merely states that, in view of the enactment of R.A. 9346, the sentence of Death Penalty, imposed upon appellant, is automatically commuted to reclusion perpetua, but is silent as to how it had arrived into such a conclusion.

Under Article 294 of the Revised Penal Code, as amended by R.A. No. 7659, robbery with homicide is punishable by reclusion perpetua to death, which are both indivisible penalties. Article 63 of the same Code provides that, in all cases in which the law prescribes a penalty composed of two indivisible penalties, the greater penalty shall be applied when the commission of the deed is attended by one aggravating circumstance.[61] It must be remembered that the Informations filed with the RTC alleged the aggravating circumstance of the use of unlicensed firearm. Pursuant to the third paragraph of Section 1 of P.D. No. 1866, as amended by R.A. No. 8294, such use of an unlicensed firearm is a special and not a generic aggravating circumstance in the homicide or murder committed. As explained by this Court in *Palaganas v. People*: [62]

Generic aggravating circumstances are those that generally apply to all crimes such as those mentioned in Article 14, paragraphs No. 1, 2, 3, 4, 5, 6, 9, 10, 14, 18, 19 and 20, of the Revised Penal Code. It has the effect of increasing the penalty for the crime to its maximum period, but it cannot increase the same to the next higher degree. It must always be alleged and charged in the information, and must be proven during the trial in order to be appreciated.[63] Moreover, it can be offset by an ordinary mitigating circumstance.

On the other hand, special aggravating circumstances are those which arise under special conditions to increase the penalty for the offense to its maximum period, but the same cannot increase the penalty to the next higher degree. Examples are quasi-recidivism under Article 160 and complex crimes under Article 48 of the Revised Penal Code. It does not change the character of the offense charged.[64] It must always be alleged and charged in the information, and must be proven during the trial in order to be appreciated.[65] Moreover, it cannot be offset by an ordinary mitigating circumstance.

It is clear from the foregoing that the meaning and effect of generic and special aggravating circumstances are exactly the same except that in case of generic aggravating, the same CAN be offset by an ordinary mitigating circumstance whereas in the case of special aggravating circumstance, it CANNOT be offset by an ordinary mitigating circumstance.

Aside from the aggravating circumstances abovementioned, there is also an aggravating circumstance provided for under Presidential Decree No. 1866,[66] as amended by Republic Act No. 8294,[67] which is a special law. Its pertinent provision states:

If homicide or murder is committed with the use of an unlicensed firearm, such use of an unlicensed firearm shall be considered as an aggravating circumstance.

In interpreting the same provision, the trial court reasoned that such provision is "silent as to whether it is generic or qualifying." [68] Thus, it ruled that "when the law is silent, the same must be interpreted in favor of the accused." [69] Since a generic aggravating circumstance is more favorable to petitioner compared to a qualifying aggravating circumstance, as the latter changes the nature of the crime and increase the penalty thereof by degrees, the trial court proceeded to declare that the use of an unlicensed firearm by the petitioner is to be considered only as a generic aggravating circumstance. [70] This interpretation is erroneous, since we already held in several cases that with the passage of Republic Act No. 8294 on 6 June 1997, the use of an unlicensed firearm in murder or homicide is now considered as a SPECIAL aggravating circumstance and not a generic aggravating circumstance. [71] Republic Act No. 8294 applies to the instant case since it took effect before the commission of the crimes in 21 April 1998. Therefore, the use of an unlicensed firearm by the petitioner in the instant case should be designated and appreciated as a SPECIAL aggravating circumstance and not merely a generic aggravating circumstance.

In another case, [72] this Court ruled that, the existence of the firearm can be established by testimony, even without the presentation of the firearm. [73] In the said case, it was established that Elmer and Marcelina Hidalgo died of, and Pedro Hidalgo sustained, gunshot wounds. The ballistic examination of the slugs recovered from the place of the incident showed that they were fired from a .30 carbine rifle and a .38 caliber firearm. The prosecution witnesses positively identified appellant therein as one of those who were holding a long firearm. It was also established that the same appellant was not a licensed firearm holder. Hence, this Court ruled that the trial court and the CA correctly appreciated the use of unlicensed firearm as an aggravating circumstance.

After a careful study of the records of the present case, this Court found that the use of unlicensed firearm was not duly proven by the prosecution. Although jurisprudence dictates that the existence of the firearm can be established by mere testimony, the fact that appellant was not a licensed firearm holder must still be established. The prosecution failed to present written or testimonial evidence to prove that appellant did not have a license to carry or own a firearm, hence, the use of unlicensed firearm as an aggravating circumstance cannot be appreciated.

Finally, it is worth noting that the RTC ordered appellant to indemnify the heirs of Edralin Macahis the amount of P50,000.00 as death indemnity, P12,000.00 as compensatory damages for the stolen service firearm if restitution is no longer possible and P50,000.00 as moral damages. Actual damages were never proven during the trial. Hence, this Court's rulings [74] on temperate damages apply, thus:

In *People vs. Abrazaldo*,^[75] we laid down the doctrine that where the amount of actual damages for funeral expenses cannot be determined because of the absence of receipts to prove them, temperate damages may be awarded in the amount of P25,000^[76] This doctrine specifically refers to a situation where no evidence at all of funeral expenses was presented in the trial court. However, in instances where actual expenses amounting to less than P25,000 are proved during the trial, as in the case at bar, we apply the ruling in the more recent case of *People vs. Villanueva*^[77] which modified the *Abrazaldo* doctrine. In *Villanueva*, we held that "when actual damages proven by receipts during the trial amount to less than P25,000, the award of temperate damages for P25,000 is justified in lieu of the actual damages of a lesser amount." To rule otherwise would be anomalous and unfair because the victim's heirs who tried but succeeded in proving actual damages of an amount less than P25,000 would be in a worse situation than those who might have presented no receipts at all but would now be entitled to P25,000 temperate damages.^[78]

WHEREFORE, the Decision dated June 29, 2007 of the Court of Appeals is hereby **AFFIRMED** with **MODIFICATION**. Appellant Marlon Albert de Leon y Homo is hereby found guilty beyond reasonable doubt of the crime of Robbery with Homicide, the penalty of which, is reclusion perpetua in view of the absence of any mitigating or aggravating circumstance. Appellant is also liable to pay the heirs of the victim, P25,000.00 as temperate damages, in addition to the other civil indemnities and damages adjudged by the Regional Trial Court, Branch 76, San Mateo, Rizal.

SO ORDERED.

Ynares-Santiago, (Chairperson), Chico-Nazario, Velasco, Jr., and Nachura, JJ., concur.

[1] Penned by Associate Justice Enrico A. Lanzanas, with Associate Justices Remedios S. Fernando and Rosalinda Asuncion-Vicente, concurring; rollo, pp. 3-23.

[2] Penned by Judge Jose C. Reyes, Jr. (now Justice of the Court of Appeals); CA rollo, pp. 36-54.

[3] Records, pp. 206-209.

[4] *Id.* at 207-208.

[5] *Id.* at 206 and 208.

[6] *Id.* at 206.

[7] *Id.* at 208.

[8] *Id.* at 206 and 208.

[9] *Id.* at 208.

[10] *Id.* at 208-209.

[11] *Id.* at 206.

[12] *Id.*

[13] *Id.* at 208.

[14] *Id.* at 206

[15] *Id.* at 208

[16] *Id.* at 205.

- [17] Id. at 208.
- [18] Id. at 210 and 211.
- [19] Id. at 211.
- [20] TSN, May 4, 2000.
- [21] TSN, May 11 and December 14, 2000.
- [22] TSN, May 18, 2000.
- [23] TSN, May 25 and June 7, 2000.
- [24] TSN, September 6 and 21, 2000.
- [25] TSN, May 3, 2001.
- [26] TSN, May 30, 2001 and July 3, 2001.
- [27] Records, pp. 203-219.
- [28] Rollo, p. 2.
- [29] Id. at 3-23.
- [30] Id. at 28
- [31] Id. at 29-30
- [32] Id. at 32-33.
- [33] CA rollo, pp. 66-94.
- [34] Id. at 122-145.
- [35] Records, pp. 152-156.
- [36] G.R. No. 134815, May 27, 2004, 429 SCRA 384.
- [37] Id. at 401-402, citing *People v. Pedroso*, 391 Phil. 43, 56 (2000).
- [38] *People v. Salazar*, G.R. No. 99355, August 11, 1997, 277 SCRA 67; *People v. Abuyan*, G.R. No. 77285, September 4, 1992, 213 SCRA 569, 582.
- [39] *People v. Ponciano*, G.R. No. 86453, December 5, 1991, 204 SCRA 627, 639.
- [40] *People v. Mangulabnan*, 99 Phil. 992 (1956).
- [41] See *People v. Puloc*, G.R. No. 92631, September 30, 1991, 202 SCRA 179, 186.
- [42] *People v. Corre, Jr.*, 415 Phil. 386, 398 (2001).
- [43] *People v. Carrozo*, 396 Phil. 764, 782 (2002) *People v. Pedroso*, supra note 37; *People v. Verzosa*, G.R. No. 118944, August 20, 1998, 294 SCRA 466.
- [44] *People v. Palijon*, 397 Phil. 545, 561 (2000).
- [45] *People v. Del Rosario*, G.R. No. 127755, April 14, 1999, 305 SCRA 740, citing *People v. Furugganan*, 193 SCRA 471 (1991).

[46] TSN, May 20, 2000, pp. 7-8.

[47] TSN, May 18, 2000, p. 6.

[48] *People v. Tulin*, 416 Phil. 364, 386 (2000).

[49] *People v. Quinico*, 417 Phil. 571, 586 (2000).

[50] *People v. Yatco*, 429 Phil. 163, 173 (2000), see also *People v. Boquirin*, 432 Phil. 722, 728, 729 (2002), *People v. Taboga*, 426 Phil. 908 (2002).

[51] *People of the Philippines v. Felipe dela Cruz*, G.R. No. 168173, December 24, 2008, citing *People v. Dominador Werba*, 431 SCRA 482 (2004); *People v. Morial*, 363 SCRA 96 (2001).

[52] *People v. Werba*, *supra*, at 495.

[53] *Rollo*, pp. 20-21.

[54] Reyes, *The Revised Penal Code*, Book One (Fourteenth Ed., Revised 1998) p. 671.

[55] *Id.*

[56] *Id.*

[57] No. L-1745. May 23, 1950. En Banc. Listed as unpublished in 88 Phil. 784. Supreme Court Unpublished Decisions (Volume 1), Judge David Nitafan and the Editorial Staff of the Central Lawbook Publishing Co., Inc., pp. 349-354.

[58] *Id.* at 354.

[59] *Id.*

[60] *Rollo*, p. 22.

[61] *People v. Montinol a*, 413 Phil. 176, 192 (2000).

[62] G.R. No. 165483, September 12, 2006, 501 SCRA 533, 557-559.

[63] Revised Rules on Criminal Procedure, Rule 110, Secs. 8 and 9.

[64] *People v. Agguihao*, G.R. No. 104725, March 10, 1994, 231 SCRA 9, 21.

[65] *CA rollo*, pp. 41-42; TSN, July 27, 1998, pp. 2-8.

[66] CODIFYING THE LAWS ON ILLEGAL/UNLAWFUL POSSESSION, MANUFACTURE, DEALING IN, ACQUISITION OR DISPOSITION, OF FIREARMS, AMMUNITION OR EXPLOSIVES; AND IMPOSING STIFFER PENALTIES FOR CERTAIN VIOLATIONS THEREOF AND FOR RELEVANT PURPOSES.

[67] AN ACT AMENDING THE PROVISIONS OF PRESIDENTIAL DECREE NO. 1866, AS AMENDED, ENTITLED: CODIFYING THE LAWS ON ILLEGAL/UNLAWFUL POSSESSION, MANUFACTURE, DEALING IN, ACQUISITION OR DISPOSITION, OF FIREARMS, AMMUNITION OR EXPLOSIVES; AND IMPOSING STIFFER PENALTIES FOR CERTAIN VIOLATIONS THEREOF AND FOR RELEVANT PURPOSES.(6 June 1997)

[68] *Rollo*, pp. 71-72.

[69] *Id.* at 72.

[70] Id.

[71] *People v. Malinao*, G.R. No. 128148, February 16, 2004, 423 SCRA 34, 51; *People v. Castillo*, 382 Phil. 503 (2002); *People v. Lumilan*, 380 Phil. 133, 145 (2000).

[72] *People v. Dulay*, G.R. No. 174775, October 11, 2007, 535 SCRA 656.

[73] *People v. Malinao*, 467 Phil. 432 (2004).

[74] *People v. Werba*, *supra* note 51, at 499.

[75] G.R. No. 124392, February 7, 2003, 397 SCRA 137.

[76] Id.

[77] 456 Phil. 14 (2003).

[78] Id.

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