

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROLLY FLORA Y CANDELARIA, MAURITO FLORA Y LIM, RAMON FLORA Y LIM, AND EREBERTO FLORA Y LIM, APPELLANTS.

G.R. No. 181594. August 28, 2008

Ponente: CHICO-NAZARIO, J.

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CHICO-NAZARIO, J.:

On appeal[1] is the 3 October 2007 Decision[2] of the Court of Appeals in CA-G.R. CR-H.C. No. 02427, affirming with modification the 2 May 2002 Decision[3] of the Regional Trial Court (RTC) of Naga City, Branch 26, in Criminal Case No. 99-7596 for the special complex crime of robbery with homicide.

Appellants Rolly Flora y Candelaria (Rolly), Maurito Flora y Lim (Maurito), Ramon Flora y Lim (Ramon) and Ereberto Flora y Lim (Ereberto) hope for the reversal of the Court of Appeals' decision finding them "guilty beyond reasonable doubt of the special complex crime of robbery with homicide under Article 294(1) of the Revised Penal Code, as amended by Republic Act No. 7659 x x x"[4] and sentencing them to suffer the "penalty of reclusion perpetua x x x." [5]

On 26 July 1999, appellants Rolly, Maurito, "Peter" and "John," all surnamed Flora, were charged with the special complex crime of robbery with homicide before the Regional Trial Court (RTC) of Naga City, Branch 26, in an Information,[6] the accusatory portion of which states:

That on or about the 25[th] day of July, 1999 at about 4:00 o'clock in the afternoon at San Vicente, Canaman, Camarines Sur, Philippines, and within the jurisdiction of the Honorable Court, the above-named accused, conspiring and confederating together and helping one another, did then and there, willfully, unlawfully and feloniously, while armed with bolos and knives, forcibly barged inside the house occupied by spouses Luisito and Nenita Esperida and while thereat, with intent of (sic) gain, by means of violence and intimidation and against the consent of the owners, take and carry away One Thousand Pesos (P1,000.00) belonging to said spouses, to the damage and prejudice of said owners in the said total sum; that on the occasion of said Robbery and for the purpose of enabling them to take, steal and carry away the money above mentioned, herein accused, in pursuance of their conspiracy, did then and there, willfully, unlawfully and feloniously with evident premeditation, taking advantage of their superior number and strength, with intent to kill, treacherously attack, assault and use personal violence upon said LUISITO ESPERIDA, by stabbing said victim and after he (victim) was already wounded continued hacking and stabbing him and thus, inflicting upon the victim Luisito Esperida serious and mortal injuries which were the direct and proximate causes of his death thereafter, to the damage and prejudice of the heir of the victim.

The case was docketed as Criminal Case No. 99-7596.

In an Amended Information dated 2 August 1999, appellants Ramon and Ereberto were named as additional accused.

Upon arraignment, appellants Rolly, Maurito, Ramon and Ereberto, all with assistance of counsel, pleaded "not

guilty" to the crime charged. During pre-trial, the identities of appellants Rolly and Ereberto were admitted by both parties. Thereafter, trial ensued, with the prosecution presenting eight witnesses, namely (1) Nenita Esperida,[7] (2) Jason Vargas,[8] (3) Novie Vargas,[9] (4) Simeon Buesa,[10] (5) Domingo Pesico,[11] (6) Joseph Alto,[12] (7) Police Officer 3 (PO3) Ernesto Molina,[13] and (8) Dr. Rhodora Roa-Perez[14] to establish appellants' culpability beyond reasonable doubt of the crime charged.

To counter the evidence above-mentioned, the defense offered the testimonies of the following: (1) Maurito,[15] (2) Ramon,[16] (3) Rolly,[17] and 4) one Emerson San Carlos.[18]

We cull the following facts from the records of the case:

From the testimonies of the witnesses of plaintiff People of the Philippines (People), the following series of events came to light: Nenita Esperida (Nenita), wife of the victim, Luisito Esperida, recounted that on 25 July 1999, at around 4:30 in the afternoon in San Vicente, Canaman, Camarines Sur, while she was inside their house together with her children and tending their sari-sari store, appellants Rolly, Maurito, Ramon and Ereberto barged into their dwelling place demanding money; that Rolly attempted to hack her in order to force her to give him P1,000.00; that Maurito punched her and demanded more money from her; that when she could not do so, Ramon grabbed her daughter and threatened to hack the latter if she did not produce more money; that it was at that time when her husband Luisito, the victim, arrived and witnessed his family being threatened; that without any warning, Rolly lunged at the victim and stabbed the latter on the left portion of his abdomen; that her husband Luisito was still able to shout, "You have no shame, you robbers," before he ran out of the house; that Maurito and Rolly chased her husband, while Ereberto and Ramon stayed behind and turned the house upside down looking for money; that appellants were her neighbors, the latter's house being only 10 meters away; and that they always bought something from her store.

Jason Vargas (Jason), nephew of the victim, lives 10 meters away, more or less, from the house of the latter. He narrated that he knew the four appellants; that on the day of the incident subject of the case at bar, he was inside his house with his wife Novie and their two children; that he heard the victim shout, "You shameless people, you robbers"; that he went out of their back door to see what was going on; that he saw his uncle come out of his house holding his left side, with Rolly and Maurito not far behind wielding knives and bolos; that he let the victim enter his house to seek refuge and tried to keep the assailants at bay by closing the door, but before he could do so, Maurito hacked him on his right forearm with the bolo; that although he was able to close and lock the door, Maurito entered the house from the window and attempted to stab him; that he and Maurito grappled for the knife, and Rolly attempted to stab him but he used Maurito as shield; that Rolly then turned to the victim and hacked the latter on the side of his neck; the latter, however, was still able to escape from the house through its back door; and that Ramon and Ereberto, who stood guard outside the front window of the house, went after the victim; and finally, that he escaped and ran to the next village to seek the assistance of authorities.

Novie Vargas (Novie), the wife of Jason, corroborated the testimony of the latter, adding that she knew the appellants since they lived near each other. She testified that she and her two children escaped from their house as Jason was closing the front door and preventing Maurito from entering.

The events that transpired after the victim had left Jason's house were supplied by the rest of the witnesses of plaintiff. One such eyewitness is Simeon Buesa (Simeon), team leader of the barangay (brgy.) tanods of Brgy. San Vicente, who testified that he knew the appellants and the victim, all of whom were his neighbors; that around 4:00 p.m. of the day in question, he was at the rice field in front of the victim's house gathering "palay" seedlings; that later on, about two meters away from where he stood, he saw the appellants by the roadside, encircling the victim; that he then saw Rolly stab the victim in the right abdominal area with a knife, about a foot in length. Said

witness added that he ran to get help, but when he saw Rolly and Ereberto take off in the other direction, he changed direction and ran after Rolly. He averred that he eventually got near Rolly and embraced him, bloodied shirt and all, in an attempt to subdue and apprehend him until another brgy. tanod, one Joseph Alto, provided assistance. He and Alto brought their captive to Brgy. Capt. Sto. Tomas and, eventually, to the Canaman police station.

Domingo Pesico (Domingo), likewise a neighbor of the victim and the appellants, narrated that at 9:00 a.m. of the day of the incident in question, he shared a bottle of gin with all the appellants, after which, all four went to the house of one Emerson San Carlos and repaired the roof of the latter's house; that at around 4:00 o'clock in the afternoon, he heard a commotion outside his house; that when he went to the door of his house to see what it was about, he saw all four appellants brandishing knives and bolos, encircling the victim; that he was just three arms-length away from the appellants and the victim; that Ramon shouted to him to stay inside his house if he did not want to get hurt; that he saw Maurito kick the victim at the back causing the latter to fall in the creek/canal; that after he heard Maurito order the rest of the appellants to leave the area, as he would be the one to take care of everything, he saw the said appellant throw away his bolo in the direction of the creek/canal; that it was at that time that he (Domingo) decided to go to the victim with the intention of helping him; that although Maurito appeared to be helping him lift the body of the victim by pulling at the latter's left forearm, he noticed that appellant was also stepping on the former's shoulder with his right foot; thus, he rebuked Maurito and told the latter to stop "helping out"; that he then summoned the victim's wife Nenita and asked her for something with which to bind the victim's abdomen, as the latter's intestines were already spilling out. After bandaging the victims gaping abdominal wound, Simeon Buesa and Eutiquio Buesa arrived and helped him (Domingo) carry the victim all the way to the RJ Village, where they were met by Jason Vargas who arrived in an ambulance.

Joseph Alto (Joseph) is a brgy. tanod of the place where the subject incident took place. He confirmed the testimony of Simon Buesa that he was the one who helped the latter apprehend Rolly; that Rolly had on a bloodied t-shirt; that he and Buesa brought the appellant to the Brgy. Captain after which they called the police; and that when the police came, Rolly was brought to the police station.

PO3 Ernesto Molina (PO3 Molina), and Special police Officer 3 (SPO3) Manuel Araajo were the first police officers to arrive at the scene of the crime. Molina related that on the day of the incident, after seeing the victim, he proceeded to the crime scene where he found a scabbard, with the name "Maurito Floro" engraved on it, on the ground in front of the victim's house; that when he inspected the house, he found the same to be in disarray; and thereafter, he supervised the taking of crime scene photographs. Molina added that a few days later, one Tomas Odiamar, a resident of Barangay San Vicente, Canaman, Camarines Sur, turned over to him a 15-inch bolo which the latter had found in the creek near the crime scene.

The last witness for the prosecution was Dr. Rhodora Roa-Perez (Dr. Roa-Perez), Municipal Health Officer of Canaman, Camarines Sur, testified that she conducted an examination of the victim's cadaver and prepared the Medico Legal Findings which contained the autopsy report where it is stated that the victim died of internal hemorrhage secondary to multiple stab wounds caused by a sharp bladed instrument.

For its part, the defense presented an entirely different scenario. Maurito admitted that he was indeed at the crime scene, but claimed that he was not the perpetrator thereof, stating that on the day of the incident, he was awakened by a loud commotion coming from outside his house; that when he went out to see who it was, he saw the victim in the creek trying to lift himself onto its bank; that the victim was crying out for help, saying he was injured; that, together with Domingo Pesico, he brought the victim all the way to the RJ Village where they were met by Jason Vargas and an ambulance; that upon PO3 Molina's invitation, he voluntarily proceeded to the police station. Maurito further testified that the other appellants were not present at the time of the incident.

In the same vein, Ramon denied the accusation leveled against him. He maintained that on the day and time of the incident, he was in Bagumbayan Norte, Naga City, buying nails for the repair of his neighbor Emerson San Carlos' house; that on his way back he was met by the latter, who warned him not to go near his (Ramon's) house as the victim's brother was looking for him (Ramon) because his brother Ereberto had stabbed the victim. But contrary to the tale of Maurito - that appellants had nothing to do with the crime charged - Ramon testified that Rolly had admitted to him that he (Rolly) stabbed the victim on the stomach.

Rolly confirmed that he stabbed the victim, Luisito Esperida, but that he did so in self-defense. He testified that on the day of the incident, he was awakened by a commotion outside his house; that he went outside, whereupon he saw Nenita, Novie, Emerson San Carlos, his brother Ereberto and the victim; that he saw the victim punch Ereberto; that he (Rolly) was the one who pacified the two protagonists, after which Ereberto was able to flee from the scene; that, unfortunately, the victim turned his attention to him and lunged at him with a knife; that he warded off the attack, twisting the victim's hand in such manner that the blade pointed back at the victim's abdomen; and that soon thereafter, he fled the crime scene, fearful for his life.

The last witness to corroborate the theory of the defense was one Emerson San Carlos (Emerson). He testified that he was a neighbor to both the victim and the appellants. He recounted that on that fateful day, at around 3:00 p.m., he went to the nipa hut owned by the victim to play tong-its, a local card game; that when he arrived at the nipa hut, a certain Junior Tekyo was already there, as well as Ereberto, the wife of the victim (Nenita) and the wife of the nephew of the victim (Novie); that the victim arrived at around 4:00 o'clock and proceeded to the nipa hut. The witness proceeded to narrate that when he got up to urinate, he heard Ereberto invite the victim to join in the card game; and that after a while, a heated discussion ensued between Ereberto and the victim, which culminated in the appellant throwing the deck of cards at the victim and the latter punching the former; that he (Emerson) tried to pacify the two but failed, so he left the scene to go to RJ Village to get help; that on his way there, he saw Jason Vargas with a bleeding arm and also asking for help; that he decided to seek police assistance instead; and that on his way back to the nipa hut, he came across Maurito and Simeon Buesa carrying the inert body of the victim.

After trial, in a judgment promulgated on 13 May 2002, the RTC found all appellants guilty of the special complex crime of robbery with homicide. The dispositive part of the trial court's judgment reads:

WHEREFORE, judgment is hereby rendered:

- Convicting the accused Rolly Flora y Candelaria, Maurito Flora y Lim, Ramon Flora y Lim and Ereberto Flora y Lim guilty beyond reasonable doubt of the special complex crime of robbery with homicide defined and penalized under Article 294 of the Revised Penal Code as amended by Republic Act No. 7659 and hereby sentences each of them to suffer the penalty of Reclusion Perpetua;
- To jointly and severally indemnify the heirs of Luisito Esperida the amount of P50,000.00 as civil indemnity for the death of Luisito Esperida, funeral and burial expenses in the amount of P22,701.00 and P50,000.00 as moral damages; and
- To pay the costs without subsidiary imprisonment in case of insolvency.[19]

In holding appellants accountable for said crime, the RTC held that -

Considering that the accused Rolly Flora invoked self-defense, it is therefore incumbent upon him to establish the same by clear and convincing evidence x x x.

x x x x

From the evidence adduced, it is clear that the accused have miserably failed to prove the aforecited requisites

for self-defense. Their contention that the deceased Luisito Esperida was the aggressor is entirely belied by the straightforward, clear and convincing testimony of the prosecution witnesses, namely: the widow Nenita Esperida, the spouses Jason and Novie Vargas, Simeon Buesa and Domingo Pesico x x x eyewitnesses attested to the fact that Luisito Esperida was unarmed and utterly defenseless when he was simultaneously assaulted by the accused and fatally stabbed by accused Rolly Flora, thereby clearly showing that the victim could not have been the unlawful aggressor immediately prior to the concerted attack and fatal stabbing.

x x x x

Besides, this Court takes notice of the Medico Legal Findings issued by Dra. Rhodora Roa-Perez, Municipal Health Officer of Canaman, Camarines Sur, which states that the deceased Luisito Esperida y Sanchez suffered four (4) different stab wounds x x x. The testimony of said doctor that with the sizes of the wounds it may have been caused by one or two weapons, is given great weight by this Court and the possibility of two or more assailants was never destroyed even on cross examination.

Accused's (sic) defense of alibi must fail in view of the positive identification of Ramon, Ereberto and Maurito as the co-perpetrators of the crime. The testimonies of the prosecution's eyewitnesses x x x that the said accuseds (sic) were present and actively participated in the commission of the crime charged belies accused denial x x x.

x x x x

On the witness stand, Ramon Flora testified that his house is merely 25 meters away from Esperida's residence x x x. Although he testified that he is (sic) in Bagumbayan Norte, Naga City, on that fateful date and time, buying nails as they were repairing the house of Emerson San Carlos, yet, this was belied by the testimony of the defense's own witness Emerson San Carlos who testified that they finished repairing his house before noontime x x x. Emerson San Carlos also testified that his house is merely 30 meters away from Esperida's residence x x x. To the mind of this court, the short distances and negligible time between the accused's (sic) residences and the place of the commission of the crime negate their defense of alibi.

Accused Maurito Flora denied any participation or involvement in the offense charged against him. He claimed that his only participation, if any, was to help retrieve the body of the victim from the creek and to carry him to the waiting ambulance x x x Accused merely denied these allegations without presenting any clear and convincing evidence to support such denials x x x.[20]

The RTC also clarified that the crime committed was robbery with homicide, reasoning that:

In the instant case, the testimony of prosecution eyewitnesses Nenita Esperida, and the spouses Jason and Novie Vargas show that the killing of the deceased took place simultaneously with robbery. The deceased witnessed that after Nenita handed the amount of One Thousand Pesos demanded by the accused Rolly Flora while Maurito Flora was asking for more amount and their other co-accused Ramon and Ereberto were ransacking the house for more valuables to steal causing him to get mad and shouted, "You shameless people, you robbers", (sic) of which Rolly Flora rushed and attacked the victim. These simultaneous events show accused intention to both rob and kill the victim and these matters were un rebutted.[21]

In the end, it concluded that:

As the evidence stand, the prosecution in the perception of the court, and to any unprejudiced observer has by clear, strong and convincing evidence, effectively pierced the constitutional presumption of innocence in favor of the accused Rolly Flora after he admitted having stabbed and killed Luisito Esperida in self-defense which he miserably failed to prove. The court therefore finds the accused Rolly Flora, Maurito Flora, Ramon Flora and Ereberto Flora guilty beyond reasonable doubt of the special complex crime of robbery with homicide without any aggravating or mitigating circumstances. There being neither aggravating nor mitigating circumstances, Article 63 of the Revised Penal Code dictates that the lesser penalty, or only reclusion perpetua,

be imposed x x x.[22]

Aggrieved, appellants filed a Notice of Appeal[23] in due time, and the case was elevated to this Court.

In view of the penalty imposed by the RTC, and conformably with *People v. Mateo*,[24] in a Resolution dated 27 March 2006,[25] we directed the transfer of this case to the Court of Appeals for intermediate review.

With modification, the Court of Appeals affirmed the conviction of appellants in a Decision dated 3 October 2007 in CA-G.R. CR-H.C. No. 02427. In addition to the amount of P50,000.00 representing civil indemnity awarded to the heirs of the victim and another P50,000.00 as moral damages, the appellate court awarded temperate damages in the amount of P25,000.00 and P1,000.00 as reparation for the stolen amount. With respect to the actual damages of P22,701.00, however, the latter was reduced to P16,892.00, because only said amount was supported by the "best obtainable receipts for the expenses during the wake of the victim x x x as attached to the summary of expenses." [26] The fallo of the Court of Appeals decision provides:

WHEREFORE, premises considered, the Decision dated 02 May 2002 of the Regional Trial Court of Naga City, Branch 26 in Crim. Case No. 99-7596 finding appellants Rolly Flora y Candelaria, Maurito Flora y Lim, Ramon Flora y Lim and Ereberto Flora y Lim guilty beyond reasonable doubt of the special complex crime of robbery with homicide under Article 294 (1) of the Revised Penal Code, as amended by Republic Act No. 7659, and sentencing each of them to suffer the penalty of reclusion perpetua is AFFIRMED with MODIFICATION in that in addition to the amounts of Php50,000.00 as civil indemnity, and Php50,000.00 as moral damages which they should jointly and severally pay the heirs of the victim Luisito Esperida, they are further ordered to jointly and severally pay the heirs of the victim the reduced amount of Php16,892.00 as actual damages, Php25,000.00 as temperate damages, and Php1,000.00 as reparation for the stolen amount.[27]

Appellants judiciously filed a Notice of Appeal with the Court of Appeals, which, in a Resolution dated 16 November 2007, gave due course to the appeal. Hence, the present case is again before us for our final disposition, anchored on the following assignment of errors, to wit:

I.

THE COURT A QUO GRAVELY ERRED IN NOT APPRECIATING THE JUSTIFYING CIRCUMSTANCE OF SELF-DEFENSE IN FAVOR OF APPELLANT ROLLY FLORA; and

II.

THE COURT A QUO GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANTS MAURITO, RAMON AND ERIBERTO FLORA GUILTY BEYOND REASONABLE DOUBT OF THE SPECIAL COMPLEX CRIME OF ROBBERY WITH HOMICIDE.[28]

It is essentially the contention of appellants that the trial and the appellate courts erred in finding them guilty beyond reasonable doubt of the crime charged despite their claim of a justifying circumstance, i.e., self-defense. They maintain that the prosecution witnesses failed to prove that the victim did not attack Rolly Flora or that he (victim) was not utterly defenseless when he was stabbed. Particularly, they argue that:

When Rolly was pushed and fell to the ground and the deceased attempted to stab him, x x x, there already exist (sic) an imminent danger to his life. With the existence of the threat to his life, the act of Rolly in twisting the right hand of Esperida and which caused the knife to hit the latter's stomach appear reasonable (sic) necessary under the circumstances. Thus, it was just but natural that to the mind of Rolly Flora, his life was in peril and that should he decide not to do something to repel the imminent attack, he will be the one harmed.

As to the reasonable necessity of the means employed to repel the aggression, there is at least a reasonable doubt, the benefit of which must be given the accused, and that the self-defense is complete x x x.[29]

They argue further that the testimonies of the witnesses presented by the prosecution were mottled with inconsistencies and discrepancies that made them insufficient to establish appellants' guilt beyond reasonable doubt as the perpetrators of the special complex crime of robbery with homicide. In their Brief, they question the reliability of prosecution witnesses: (1) Simeon Buesa, because he was not able to witness the actual stabbing of the victim; (2) Jason Vargas, when he claimed that only Ereberto and Ramon were the ones who ran after the victim, as Maurito was being detained by him (Jason), contrary to Buesa's statement that Maurito was present when the victim was stabbed by his co-appellant Rolly; and (3) Dr. Rhodora Roa-Perez, though she averred that "it was possible that the wounds sustained by the victim could have been inflicted by more than one instrument," but she contradicted her own conclusion when she likewise stated that it was possible that the first and second wound were caused by only one instrument although the strength used was different.[30] In view of the foregoing, they construe that:

The fact that the people who were supposedly present at the scene of the crime could not agree as to the simple details relating to the incident on the night in question inevitably casts doubt on their credibility.[31]

Anent the assigned error respecting the supposed innocence of appellants Ramon, Maurito and Ereberto, they insist that:

The admission by accused-appellant Rolly Flora should prevail over the testimony of the prosecution witnesses considering that the said admission is more credible and consistent with human nature.[32]

considering that:

No one in his right mind would readily admit to a criminal act and exculpate his co-perpetrators with such serious repercussions to the former, if all of them had really participated in the commission of the crime. If all of the appellants indeed participated in the killing of Esperida, as alleged by the prosecution witnesses, the natural reaction of the one who confessed to the crime would be to reveal his co-perpetrators.[33]

All told, appellants, thus, assert that the significant discrepancies in the testimonies of the witnesses of the prosecution showing them to be the perpetrators of the crime charged are tantamount to reasonable doubt respecting their legal culpability thereto. And there being reasonable doubt, their constitutionally guaranteed right to be presumed innocent was not overcome.

The Office of the Solicitor General (OSG), for the People of the Philippines, on the other hand, asserts that the alleged conflicting points in the testimony of the witnesses of the prosecution are but trivial in nature and do not depart from the fact that appellants were positively identified as the authors of the crime charged. In defense of Simeon Buesa's testimony, the OSG points out that "[a]ppellants failed to adduce any proof of malice or ill-motive on the part of Simeon to pinpoint and falsely implicate them as the assailants of the victim." [34] With respect to Jason Vargas, it rationalized that "[t]he purpose of Jason in testifying at (sic) this case cannot be doubted. It is natural for him to seek the vindication of his right and those of this (sic) family as they were aggrieved by the appellants. It is not in accord with human experience that he who was a victim would impute such a grievous act on somebody other than the real culprits." [35]

The OSG then reminds that:

Finely embedded in our jurisprudence is the rule that positive identification, where categorical and consistent and without any showing of ill-motive on the part of the eye-witnesses testifying in the matter, prevails over alibi and denial which, if not substantiated by clear and convincing proof, are negative and self-serving evidence undeserving of weight in law.[36]

The justifying circumstance of self-defense raised by appellants is lightly brushed aside by the OSG reasoning

that:

In the case at bar five (5) prosecution eyewitnesses in the persons of Nenita Esperida, spouses Jason and Novie Vargas, Simeon Buesa and Domingo Pesico testified in a straightforward, clear and categorical manner that Luisito was unarmed and utterly defenseless when he was simultaneously assaulted by the appellants and fatally stabbed by Rolly, thereby showing that the victim could not have been the unlawful aggressor immediately prior to the concerted attack and fatal stabbing x x x.[37]

The OSG then concludes that:

All these, plus the lack of any corroborating testimony on the part of any independent witness for the defense duly supported with the evidence on record or physical evidence, weaken appellant Rolly's claim of self-defense.[38]

Considering the preceding arguments and counter-arguments, the threshold issue in this case, therefore, is whether or not the prosecution was able to prove the guilt of defendants-appellants beyond reasonable doubt of the special complex crime of robbery with homicide on the basis of the evidence presented by the prosecution witnesses.

The appeal has no merit. This Court is convinced that appellants are all equally guilty of the special complex crime of robbery with homicide.

In criminal law, it is settled that when the killing is admitted and self-defense is invoked, the burden of evidence shifts to the accused to show that the result (killing) was legally justified. Otherwise stated, the accused assumes the burden to establish his plea by credible, clear and convincing evidence; otherwise, conviction would follow from his admission that he killed the victim.[39] In the case at bar, having owned up to the killing of the victim, the accused should be able to prove the elements of self-defense in order to avail himself of this justifying circumstance; and he must discharge this burden by clear and convincing evidence.

For self-defense to be appreciated, it is required that there be: (1) an unlawful aggression by the victim injured or killed by the accused; (2) reasonable necessity of the means employed to prevent or repel that unlawful aggression; and (3) lack of sufficient provocation on the part of the person defending himself. And all the foregoing conditions must concur.[40]

Herein, the RTC and the Court of Appeals were both correct when they held that the justifying circumstance of self-defense was baselessly invoked by appellant Rolly. The latter failed to discharge the burden of proving this justifiable circumstance. His claim that the victim initiated the fracas with his unlawful act of trying to stab the former is specious at best. Unlawful aggression presupposes an actual, sudden and unexpected or imminent danger on the life and limb of a person - a mere threatening or intimidating attitude is not sufficient.[41] But whether or not Rolly, indeed, acted in self-defense is a question of fact;[42] the well-entrenched rule is that the findings of fact of the trial court in the ascertainment of the credibility of witnesses and the probative weight of the evidence on record affirmed, on appeal, by the appellate court are accorded high respect, if not conclusive effect, by the Court; and in the absence of any justifiable reason to deviate from the said findings.[43]

The RTC gave no credence and probative value to the evidence proffered by appellants to prove that Rolly acted in self-defense when he stabbed the victim; and that the rest (Ramon, Maurito and Ereberto) had no actual participation in said act. All of them failed to establish that the RTC and Court of Appeals misconstrued or ignored facts and circumstances of substance which, if considered, would have warranted a reversal of the guilty verdict of the trial court, and affirmed by the appellate court.

Contrary to the claim of appellants, the prosecution witnesses clearly and positively established the factual backdrop leading to the stabbing of the victim. That there existed no unlawful aggression is evident from the facts

of the case - the victim, after arriving at his residence, was caught unaware of the crime being committed inside his house and, after sustaining a stab wound on his abdomen, ran away from appellants. Luisito Esperida was never an aggressor; from the time he was attacked inside his residence until he ended up at the creek, he was a victim. There can be no self-defense unless the accused proves unlawful aggression. Considering that the element of unlawful aggression is absent, there is no use discussing whether or not the other elements - the reasonable necessity of the means employed to repel the unlawful aggression and the lack of sufficient provocation on the part of the person defending him - have been adequately proved.

Accordingly, having set aside the claim of self-defense, we now come to the crime alleged to have been committed by appellants, that is, the special complex crime of robbery with homicide.

Article 294, paragraph 1 of the Revised Penal Code, as amended by Republic Act No. 7659, reads:

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:

- 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.

x x x x.

To warrant the conviction of appellants for said charge, the prosecution was burdened to prove the confluence of the following essential elements:

(a)

the taking of personal property with the use of violence or intimidation against a person;

(b)

the property thus taken belongs to another;

(c)

the taking is characterized by intent to gain or *animus lucrandi*; and

(d)

on the occasion of the robbery or by reason thereof, the crime of homicide, which is therein used in a generic sense, was committed.[44]

In this case, the prosecution proved beyond reasonable doubt that appellants conspired and confabulated with each other in robbing the victim and his wife, Nenita Esperida, of money, at least; and in killing the victim, in the face of the clear and positive identification of appellants as the perpetrators.

Maurito and Ramon's defense of alibi and denial, like Rolly's justification of self-defense, are unavailing and worthless. Alibi and denial are inherently weak defenses,[45] and it is not at all persuasive in the instant case when pitted against the positive and convincing identification by all the witnesses of the prosecution.[46] Here, the defense of alibi and denial, i.e., Maurito's plea that he was asleep from the time prior to seeing the victim struggling at the creek; and Ramon's argument that he was at Bagumbayan Norte, Naga City, to buy nails, do not evince credible exculpation. We quote with approval the appellate court's pronouncement rejecting Maurito and Ramon's excuses, viz:

The time-tested rule is that alibi cannot prevail over the positive assertions of prosecution witnesses, more so in

this case where appellant failed to prove that he was at another place at the time of the commission of the crime and that it was physically impossible for him to be at the crime scene (citation omitted). for the defense of alibi to prosper, the accused must prove not only that he was at some other place at the time the crime was committed but that it was likewise impossible for him to be at the locus criminis or its immediate vicinity at the time of the alleged crime. Where there is even the least chance for the accused to be present at the crime scene, the defense of alibi will not hold water. Furthermore, appellant's denial fails in the light of the positive identification and declarations of the prosecution witnesses. The positive identification of an accused by eyewitnesses prevails over the defenses of denial of alibi and denial. 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. Being evidence that is negative in nature and self-serving, they cannot attain more credibility than the testimonies of prosecution witnesses who testify on clear and positive evidence (citation omitted).[47]

It is noted that Rolly and Maurito acknowledged being at the crime scene.[48] They have not shown the impossibility of their committing the bestial deed although they were allegedly in another place at some point, given the distance of their supposed whereabouts from the scene of the crime. Equally unimpressed with the alibi and denial of appellants, the trial court held that:

Again, the accused miserably failed to discharge this burden. On the witness stand, Ramon Flora testified that his house is merely 25 meters away from Esperida's residence (tsn, November 19, 2001, p. 2). Although he testified that he is in Bagumbayan Norte, Naga City, on that fateful date and time, buying nails as they were repairing the house of Emerson San Carlos, yet, this was belied by the testimony of the defense's own witness Emerson San Carlos who testified that they finished repairing his house before noon (tsn, February 22, 2002, p. 14). Emerson San Carlos also testified that his house is merely 30 meters away from Esperida's residence. In the same manner, Maurito Flora testified that his house is just beside the house of Ramon Flora, which is merely 25 meters away from Esperida's residence (tsn, November 5, 2001, p. 3). To the mind of this court, the short distances and negligible time between the accused's (sic) residences and the place of commission of the crime negate their defense of alibi.[49]

In the case at bar, we are satisfied that the witnesses of the prosecution, eyewitnesses to the events that transpired on the fateful day, have positively identified appellants as the malefactors. We do not believe that they could have fabricated their charges and testimonies by weaving or inventing a tale purely out of mere imagination. Though not one of them was able to witness the entire event - from the time appellants barged into the house of the victim, until the latter ended up at the creek with a gaping wound in his abdomen - but each of them positively narrated that he/she witnessed appellants attacking and/or pursuing the victim; and, when put together, each testimony interlocked with the others like pieces of a puzzle to form one whole picture. Taken seriatim, but evaluated as one, the testimonies would rival a celluloid version, had one been actually recorded. Neither do we think that their testimonies were anything but spontaneous and brought forth only from what they saw the victim actually endured from the hands of appellants. Like the trial court and the appellate court, this Court finds no reason to be suspicious of the testimonies of the witnesses of the prosecution. The testimonies, appreciated in whole, are more than candid and definitive enough to sustain conviction of the appellants.

Well-settled is the legal principle that a categorical and positive identification of an accused, without any showing of ill motive on the part of the eyewitness testifying on the matter, prevails over alibi and denial.[50] The defenses of denial and alibi deserve scant consideration when the prosecution has strong and convincing evidence identifying appellants as the perpetrators.

Appellants' asseveration respecting the supposed inconsistencies in the testimonies of Simeon Buesa and Jason Vargas are tenuous. While it is true that there are inconsistencies in the narration of facts of some of the witnesses for the prosecution, to our mind, such do not detract from its basic truthfulness or reliability. The supposed inconsistencies are more apparent than real and refer, at most, only to insignificant or trivial details and do not

impinge on the positive identification of appellants. The foregoing bear no materiality to the commission of the special complex crime of robbery with homicide with which appellants have been charged and of which they have been convicted. As pointed out by the OSG, the seeming inconsistencies were but minor lapses that could not detract from the value of the evidence given by a disinterested person and the overwhelming logic that a person, nay, a victim, would not impute a grievous act on somebody other than the real perpetrator or culprit.

As to the damages awarded by the Court of Appeals, however, this Court finds that a modification needs to be made. It is our obligation to correct said error, albeit not assigned as such, as may be found in the judgment appealed from, since an appeal in a criminal case throws the whole case wide open for review.[51]

This Court notes that the RTC awarded the heirs of the victim actual damages in the amount of P22,701.00. The Court of Appeals modified the amount to P16,892.00 for the reason that only such amount was supported by the "best obtainable receipts for the expenses during the wake of the victim x x x." But considering that the heirs of the victim have already been awarded temperate damages in the amount of P25,000.00, we delete the amount of P16,892.00 representing actual damages. As we have ruled in *People v. Werba*,[52] citing *People v. Villanueva*,[53] in instances where actual expenses amounting to less than P25,000.00 are proved during trial, the award of temperate damages of P25,000.00 is justified in lieu of the actual damages of a lesser amount.[54]

WHEREFORE, in light of the foregoing, the appeal is hereby DENIED for lack of merit. Accordingly, the Decision of the Court of Appeals dated 3 October 2007 in CA-G.R. CR-H.C. No. 02427 is AFFIRMED with MODIFICATION to the effect that the amount of P16,892.00 as actual damages is deleted in view of the award of P25,000.00 as temperate damages. Appellants Rolly Flora y Candelaria, Maurito Flora y Lim, Ramon Flora y Lim and Ereberto Flora y Lim are hereby found GUILTY of the special complex crime of ROBBERY WITH HOMICIDE and are hereby sentenced each to suffer the penalty of Reclusion Perpetua and are ordered to pay the heirs of Luisito Esperida, jointly and severally, the amount of P50,000.00 as civil indemnity, P50,000.00 as moral damages, P25,000.00 as temperate damages and P1,000.00 as reparation for the amount stolen by appellants. Costs de oficio.

SO ORDERED.

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

[1] Pursuant to Section 13 (c) of Rule 124 of the Rules of Court as amended by A.M. No. 00-5-03-SC; in a Resolution dated 16 November 2007, the Court of Appeals gave due course to the appellants' Notice of Appeal.

[2] Penned by Associate Justice Celia C. Librea-Leagogo with Associate Justices Regalado E. Maambong and Sixto C. Marella, Jr., concurring; CA rollo, pp. 239-280.

[3] Penned by Hon. Filemon B. Montenegro, Presiding Judge, RTC Naga City, Branch 26; CA rollo, pp. 35-46.

[4] Rollo, p. 42.

[5] Id.

[6] CA rollo, pp. 10-11.

[7] TSN, 24 April 2001, pp. 2-16; 18 September 2001, pp. 2-14; 12 October 2001, pp. 2-22.

[8] TSN, 29 November 2000, pp. 2-30; 12 December 2000, pp. 2-9; 19 February 2001, pp. 2-13.

[9] TSN, 27 February 2001, pp. 2-20.

- [10] TSN, 12 October 1999, pp. 2-21; 6 March 2002, pp. 2-15.
- [11] TSN, 4 October 2000, pp. 2-10.
- [12] TSN, 12 October 1999, pp. 21-28.
- [13] TSN, 13 October 1999, pp. 14-27; 18 October 1999, pp. 2-18; 28 November 2000, pp. 2-22.
- [14] TSN, 11 October 1999, pp. 2-24; 13 October 1999, pp. 2-14.
- [15] TSN, 5 November 2001, pp. 2-18.
- [16] TSN, 9 November 2001, pp. 2-14; 19 November 2001, pp. 2-9.
- [17] TSN, 11 February 2002, pp. 2-23.
- [18] TSN, 22 February 2002, pp. 2-30.
- [19] CA rollo, p. 46.
- [20] Id. at 42-43.
- [21] Id. at 44.
- [22] Id. at 45-46.
- [23] Id. at 47.
- [24] G.R. Nos. 147678-87, 7 July 2004, 433 SCRA 640.
- [25] CA rollo, pp. 123-124.
- [26] Rollo, p. 42.
- [27] Id.
- [28] CA rollo, p. 74.
- [29] Id. at 84-85.
- [30] Id. at 85.
- [31] Id. at 87.
- [32] Id. at 88.
- [33] Id.
- [34] Id. at 165.
- [35] Id.
- [36] Id. at 164.
- [37] Id. at 149.
- [38] Id. at 163.
- [39] *People v. Tagana*, 468 Phil. 784, 800-801 (2004).
- [40] Id. at 801.

- [41] Martinez v. Court of Appeals, G.R. No. 168827, 13 April 2007, 521 SCRA 176, 194-195.
- [42] People v. De los Reyes, G.R. No. 140680, 28 May 2004, 430 SCRA 166, 173; Senoja v. People, G.R. No. 160341, 19 October 2004, 440 SCRA 695, 706.
- [43] Rugas v. People, 464 Phil. 493, 504 (2004).
- [44] People v. Gamo, 351 Phil. 944, 953-954 (1998).
- [45] People v. Suarez, G.R. Nos. 153573-76, 15 April 2005, 456 SCRA 333, 349.
- [46] People v. Isla, Jr., 432 Phil. 414, 431 (2002).
- [47] Rollo, p. 32.
- [48] TSN of 5 November 2001, pp. 7-10; and 11 February 2002, pp. 5-9.
- [49] CA rollo, p. 43.
- [50] People v. Suarez, supra note 45 at 349.
- [51] Ferrer v. People, G.R. No. 143487, 22 February 2006, 483 SCRA 31, 54.
- [52] G.R. No. 144599, 9 June 2004, 431 SCRA 482, 499.
- [53] 456 Phil. 14, 28-29 (2003).
- [54] People v. Werba, supra 52 at 499-500.

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