

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. RENE BARON Y TANGAROCAN, APPELLANT. REY VILLATIMA AND ALIAS “DEDONG” BARGO, ACCUSED.

G.R. No. 185209. June 28, 2010

Ponente: DEL CASTILLO, J.

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DEL CASTILLO, J.:

Circumstantial evidence is sufficient to produce a conviction that the appellant conspired with his co-accused in committing the crime of robbery with homicide. His claim that he acted under the impulse of uncontrollable fear of an equal or greater injury could not be sustained because there was no genuine, imminent, and reasonable threat, preventing his escape that compelled him to take part in the commission of the offense charged.

Factual Antecedents

On July 19, 1995, an Information[1] was filed before the Regional Trial Court of Cadiz City, Negros Occidental, Branch 60, charging Rene Baron y Tangarocan (appellant), Rey Villatima (Villatima), and alias "Dedong" Bargo (Bargo) with the special complex crime of robbery with homicide committed against Juanito Berallo (Berallo). The Information contained the following accusatory allegations:

That on or about 9 o'clock in the evening of June 28, 1995 at Hda. Sta. Ana, Brgy. Burgos, Cadiz City, Negros Occidental, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and helping one another with evident premeditation and treachery and with intent to kill, did then and there, willfully, unlawfully and feloniously assault, attack and stab to death one Juanito Berallo in order to rob, steal and take away the following:

- 1) sidecar of the tricycle which costs P16,000.00;
- 2) motorcycle described as Kawasaki HDX colored black with Engine No. G7E-088086 and Chassis No. HDX-849776 which is worth P103,536.00;
- 3) wallet with cash money of P1,250.00;
- 4) wrist watch and ring worth P3,800.00.

and inflicting upon the person of Juanito Berallo the following injuries, to wit:

- Gaping incised wound, shallow at the extremities and deeper at the middle portion, 7½ cms. long, from right lateral aspect of the neck going slightly downward and to the left of anterior neck.
- Stabbed wound, 2 cm. long, 14 cm. deep, directed slightly upward and to the right, located on the upper chest below wound # 1.
- Stabbed wound, 2 cm. long, 12½ cm. deep, directed to the right, located at the left chest, level of 3[rd] rib.
- Stabbed wound, 2 cm. long 20 cm. deep, directed slightly downward and to the left, located at the middle of

the chest, level of 5[th] rib.

- Incised wound 1½ cm long, right cheek.
- Stabbed wound, 2 cm. long, 6½ cm. deep, directed downward located at the medial aspect of the upper back, right.
- Stabbed wound, 2½ cm. long, 10 cm. deep, located at the upper outer quadrant of the back, right.
- Incised wound, 2 cm. long, located at the middle of the upper quadrant of back, right.
- Stabbed wound, 2 cm. long, 4 cm. deep, directed downward located at the medial aspect of upper inner quadrant of back, left.
- Stabbed wound, 2 cm. long, 5 cm deep, directed downward, located at the middle of upper quadrant of back, left.
- Incised wound, 2 cm long, located 2 cm to the left of wound # 10.
- Stabbed wound, 2 cm. long, 7½ cm. deep, directed downward located at the middle of lower back, left.
- Incised wound, 6½ cm. long, distal third left forearm.
- Incised wound, 3 cm. long palmar surface left hand.
- Incised wound, 5 cm. long palmar surface left hand, 2 cm. below wound # 13.

CAUSE OF DEATH: Severe hemorrhage due to Multiple Stabbed wounds,

which directly caused the death of the victim Juanito Berallo, to the damage and prejudice of the heirs of the victim in the amount, to wit:

P 50, 000.00 - as indemnity for the death of the victim.

P 150, 000.00 - as indemnity for the loss of earning capacity, or such amount to be fixed by the court.

ACT CONTRARY TO LAW.

Only the appellant was arrested. Villatima and Bargo remain at-large to date. Appellant entered a plea of "not guilty" when arraigned. After the termination of the pre-trial conference, trial ensued.

The Prosecution's Version

Culled from the evidence presented by the prosecution, the case against the appellant is as follows:

On June 28, 1995, at around 8:30 in the evening, Ernesto Joquino, Jr. (Joquino), a tricycle driver, was having a conversation with Canni Ballesteros (Ballesteros) in front of Julie's Bakeshop at Magsaysay St., Cadiz City. Berallo arrived and parked his tricycle in front of the bakeshop. The appellant approached Berallo and asked if he could take him and his companions to Hacienda Caridad for P30.00. When Berallo agreed, the appellant called Villatima, then wearing a fatigue jacket, and Bargo. They then rode Berallo's tricycle.

Pacita Caratao, a dressmaker, was also in Julie's Bakeshop at around the same time Joquino and Ballesteros were in front of the premises. She noticed Berallo sitting on a parked tricycle while the appellant was seated behind him. After buying bread, she approached Berallo and asked if he was going home to Lag-asan, hoping that she could ride with him. However, Berallo replied that he still had to ferry passengers. She thus decided to cross the street and take a passenger jeep. While inside the jeep, she saw two more persons boarding Berallo's tricycle.

On June 29, 1995, SPO2 Jude dela Rama received a report of a robbery with homicide incident. Together with

other policemen, he proceeded to Hacienda Sta. Ana, Cadiz City, where he saw Berallo lying dead in a sugarcane plantation about 20 meters away from the highway. They also noticed several traces of footprints near Berallo's body and a tricycle sidecar in a canal beside the Martesan Bridge. Beside the sidecar was a fatigue jacket.

Dr. Merle Jane B. Regalado conducted the post-mortem examination on the cadaver of Berallo. She found that the victim sustained 15 stab wounds and died of severe hemorrhage due to multiple stab wounds. Five of them were considered as fatal and caused the immediate death of Berallo. The wounds also indicated that they could have been inflicted by more than one person.

The follow-up investigation of the police team identified the appellant as one of the suspects. After having been apprised of his rights, appellant admitted that he and his co-accused took Berallo's tricycle and, after detaching the motorcycle from the sidecar, brought the motorcycle to Barangay Oringao, Kabankalan, Negros Occidental and left the same at the house of Villatima's aunt, Natividad Camparicio (Natividad).

Natividad denied knowledge of the incident but admitted that her nephew Villatima, together with the appellant, and another companion, were the ones who brought the motorcycle to her house in Kabankalan.

Nemia Berallo (Nemia) identified the motorcycle recovered from the house of Natividad as the one stolen from her deceased husband. She also testified on the sum of money and the value of the personal property stolen from her husband. She allegedly spent the sum of P2,400.00 for the purchase of the burial lot.

The Version of the Defense

Appellant denied any participation in the crime. He claimed that on June 28, 1995, at around 7 o'clock in the evening, he bought rice and other necessities for his family and proceeded to the public transport terminal to get a ride home. A tricycle with two passengers passed by and its driver inquired if he wanted a ride up to Segundo Diez. He boarded the tricycle and told the driver that he would alight at Canibugan, but the driver requested him to accompany them up to Segundo Diez. He agreed out of concern for the safety of the driver. Upon reaching Bangga Doldol, however, the passengers announced a hold-up. Armed with guns, the passengers told him and the driver not to make any wrong move, or they would be killed. Thereafter, the passengers tied the hands of the driver and dragged him towards the sugarcane fields. He no longer knew what happened to the driver since he remained in the tricycle. However, he suspected that the driver was killed by the two passengers.

Thereafter, the passengers went to Taytay Martesan and detached the sidecar of the tricycle. They then took him to a house at Barangay Oringao and did not allow him to leave the premises. The following morning, they returned to Cadiz City. The two passengers even accompanied him to his house and threatened him and his wife at gunpoint not to report the incident to the police authorities.

On June 30, 1995, at around 10:00 o'clock in the evening, policemen came to his house and asked where the motorcycle was taken. He told them of the location of the vehicle and insisted that he had nothing to do with the incident. He stressed that the two passengers whose names he did not know, were responsible for the crime committed.

Ruling of the Regional Trial Court

On February 12, 2002, the trial court rendered a Decision[2] finding the appellant guilty beyond reasonable doubt of the complex crime of robbery with homicide. It disposed as follows:

WHEREFORE, in view of the foregoing, this Court finds accused RENE BARON Y TANGAROCAN (detained) GUILTY beyond reasonable doubt of the complex crime of Robbery with Homicide as charged in the information and there being the attendance of the aggravating circumstance of treachery hereby sentences

him to suffer the penalty of DEATH.

The accused is further ordered to pay the heirs of the victim the amount of P50,000.00 by way of indemnity for the death of the victim, Juanito Berallo and the amount of P5,050.00 for the cash and the value of the wrist watch and ring of the victim plus the amount of P2,400.00 for the purchase of the burial lot by way of reparation and in addition the amount of P100,000.00 as moral damages and P50,000.00 as exemplary damages. The sidecar and the motorcycle are hereby ordered returned to the heirs of the victim.

The accused is further ordered to be immediately committed to the National Penitentiary for service of his sentence.

The Clerk of Court of this Court is hereby ordered to immediately forward the records of this case together with the Decision of this Court to the Supreme Court for automatic review.

The case against Rey Villatima and alias "Dedong" Bargo [both of whom are] at-large is hereby ordered archived and [to] be immediately revived upon their arrest.

Cost against accused Rene Baron.

SO ORDERED.[3]

Ruling of the Court of Appeals

Before the appellate court, appellant alleged that the trial court erred in finding him guilty as charged and in not appreciating in his favor the exempting circumstance of irresistible force and/or uncontrollable fear of an equal or greater injury. However, the same was disregarded by the CA holding that all the requisites for said circumstances were lacking. The appellate court found that the alleged threat, if at all, was not real or imminent. Appellant had every opportunity to escape but did not take advantage of the same. Instead, he waited inside the tricycle as if he was one of the malefactors. The dispositive portion of the CA Decision[4] reads as follows:

WHEREFORE, the APPEAL is DISMISSED. The Decision dated February 12, 2002, of the Regional Trial Court (RTC), Cadiz City, Negros Occidental, Branch 60, in Criminal Case No. 1675-C finding accused-appellant Rene Baron y Tangarocan guilty of robbery with homicide is AFFIRMED with MODIFICATION reducing the death penalty to reclusion perpetua without parole conformably with R.A. 9346 and reducing the award of moral damages from P100,000.00 to P50,000.00 and exemplary damages from P50,000.00 to P25,000.00.

Costs against accused-appellant.

SO ORDERED.

Issues

Still aggrieved, the appellant comes to us for a final review of his case. In his brief, he assigns the following correlated errors:

I

THE TRIAL COURT GRAVELY ERRED IN FAILING TO APPRECIATE THE EXEMPTING CIRCUMSTANCES OF IRRESISTIBLE FORCE AND/OR UNCONTROLLABLE FEAR OF AN EQUAL OR GREATER INJURY.

II

THE TRIAL COURT GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF THE CRIME CHARGED.[5]

Our Ruling

The appeal is unmeritorious.

Robbery with homicide exists when a homicide is committed either by reason, or on occasion, of the robbery. To sustain a conviction for robbery with homicide, the prosecution must prove the following elements: (1) the taking of personal property belonging to another; (2) with intent to gain; (3) with the use of violence or intimidation against a person; and (4) on the occasion or by reason of the robbery, the crime of homicide, as used in the generic sense, was committed. A conviction needs certainty that the robbery is the central purpose and objective of the malefactor and the killing is merely incidental to the robbery. The intent to rob must precede the taking of human life but the killing may occur before, during or after the robbery.[6]

In this case, the prosecution successfully adduced proof beyond reasonable doubt that the real intention of the appellant and his companions was to rob the victim. The appellant and his companions boarded the tricycle of the victim pretending to be passengers. Midway to their destination, one of the accused declared a hold-up and at gun point, tied the hands of the victim and brought him towards the sugarcane field where he was stabbed to death. The victim was divested of his wallet containing P1,250.00, a wrist watch and ring. Emerging from the sugarcane plantation, they boarded the tricycle of the victim, detached the sidecar and dumped the same in a canal beside the Martesan Bridge with the fatigue jacket of one of the accused. They proceeded to Barangay Oringao, Kabankalan and hid the motorcycle in the house of Villatima's aunt, Natividad.

Concededly, there is no direct evidence proving that the appellant conspired and participated in committing the crime. However, his complicity may be proved by circumstantial evidence, which consists of proof of collateral facts and circumstances from which the existence of the main fact may be inferred according to reason and common experience.[7] Circumstantial evidence is sufficient to sustain conviction if: (a) there is more than one circumstance; (b) the facts from which the inferences are derived have been established; (c) the combination of all circumstances is such as to warrant a finding of guilt beyond reasonable doubt.[8] A judgment of conviction based on circumstantial evidence can be sustained when the circumstances proved form an unbroken chain that results to a fair and reasonable conclusion pointing to the accused, to the exclusion of all others, as the perpetrator.[9]

In this case, the circumstantial evidence presented by the prosecution leads to the inescapable conclusion that the appellant and his co-accused conspired to commit robbery with homicide. When considered together, the circumstances point to them and no one else as the culprits. We thus agree with the observation of the trial court that:

A careful examination of the records of this case reveals, [that] no eye witness was presented by the prosecution pointing to the three accused to be actually responsible in the perpetration of the crime charged except the extra-judicial narration of the accused Rene Baron but who also tried to exculpate himself from the commission of the crime by denying his [complicity] in the crime.

Despite this finding however, this Court found from the records of this case, numerous and cumulative material circumstantial evidence from which one can derive a logical and necessary inference clearly showing the three accused to be responsible for the crime charged and these are the following; to wit:

1. The fact that at about 8:30 in the evening of June 28, 1995 witness Ernesto Joquino, Jr. while in front of Julie's Bakeshop saw the victim Juanito Berallo [park] the latter's tricycle in front of the bakeshop when accused Rene Baron hired the tricycle of the victim in going to Hda. Caridad and whose companions were Rey Villatima and "Dedong" Bargo (TSN-Tan, January 18, 1996, pp. 6-10). Thus, the excerpts of the Transcript of the Stenographic Notes has this to reveal in vivid fashion, to wit:

"Q.

Mr. Joquino, on June 28, 1995 at about 8:30 in the evening where were you?

A.

I was in front of Julie's Bakeshop.

Q.

Where is this Julie's Bakeshop located x x x?

A.

At Magsaysay Street, Cadiz City.

Q.

What were you doing at Julie's Bakeshop at that particular date and time?

A.

I was x x x having a conversation with Canni Ballesteros.

Q.

While you were x x x in front of Julie's Bakeshop, was there anything that transpired?

A.

Yes, ma'am.

Q.

Can you tell us what was that?

A.

I saw Juanito Berallo park his tricycle in front of Julie's Bakeshop.

Q.

When you saw Juanito Berallo park his tricycle x x x in front of Julie's Bakeshop, what transpired after that?

A.

Rene Baron approached Juanito Berallo and asked him if he can conduct Rene Baron to Hda. Caridad.

Q.

By the way, do you know Rene Baron before June 28, 1995?

A.

Yes, ma'am, I know him because we are all drivers of the tricycle.

Q.

What about this Juanito Berallo, do you know him before June 28, 1995?

A.

Yes ma'am.

Q.

Why do you know him?

A.

Because he ran as councilor in Cadiz City.

Q.

So going back to the incident where you said Rene Baron approached Juanito Berallo and asked Berallo if the latter would conduct him to Hda. Caridad, what was the answer of Juanito Berallo to Rene Baron?

A.

Juanito Berallo asked Rene Baron how much he will pay [to] him and then Rene Baron said that he will pay Juanito Berallo the amount of P30.00 and then again Juanito Berallo asked Rene Baron how many x x x will ride on the tricycle and Rene Baron said that there were three of them.

Q.

By the way, how far were you from where Juanito Berallo and Rene Baron were talking?

A.

From here up there. (Witness pointed to a distance of about four (4) meters.)

Q.

After Juanito Berallo agreed with Rene Baron and his companions to conduct them to Hda. Caridad, what did Rene Baron do if there was any?

A.

Rene Baron called his companions who were just across the street.

Q.

Were you able to recognize x x x the two companions whom Rene Baron called from across the street?

A.

Yes, sir.

Q.

And who were they if you know?

A.

Rey Villatima and Dedong Bargo."

(TSN-Tan, January 18, 1996, pp. 6-10)

2. The fact the Rey Villatima was wearing a fatigue jacket when the latter boarded the tricycle of the victim and proceeded to Hda. Caridad (ibid, p. 12) and it was the same fatigue jacket recovered by the police from the sidecar of the tricycle at the scene of the crime and this was the last time that the victim was seen alive;

3. The fact that witness Pacita Caratao corroborated the testimony of Ernesto Joquino, Jr. and Berallo sitting on the latter's tricycle parked near Julie's Bakeshop and saw Rene Baron sitting behind Juanito Berallo and the witness even asked the former if he will be going to Lag-asan to which the victim Juanito Berallo refused because he has some passengers to be conducted (TSN-Tan, March 13, 1997, pp. 3-4) and has referred to the accused Rene Baron and his two companions (TSN-Tan, March 13, 1997, pp. 4-5) as his passengers;
4. The fact that during the police investigation witness SPO2 Jude de la Rama found the dead body of the victim inside the sugarcane plantation in Hda. Sta. Ana and found many traces of footsteps inside the sugarcane fields (TSN-Tan, July 8, 1997, p. 4) indicating that more than one person conspired and co-operated with each other in killing the victim;
5. The fact that the witness De la Rama found the sidecar of the tricycle beside the Martisan Bridge which is just beside the scene of the incident and also beside the sidecar of the tricycle they found a fatigue jacket and has recovered inside its pocket a used soap (ibid, p. 5);
6. The fact that when the police officers invited Rene Baron for interview, Rene Baron pointed to his co-accused, Rey Villatima as the one who was wearing the fatigue jacket the police officers recovered as well as had named his (Baron) other companion as alias "Dedong" Bargo (ibid, p. 7);
7. The fact that after the three accused had detached the motorcycle from its sidecar, Rey Villatima was pointed to by the accused Rene Baron as the one who drove it while he (Rene Baron) and "Dedong" Bargo rode behind and all of them immediately proceeded to the house of the aunt of Rey Villatima in Brgy. Oringao, Kabankalan, Negros Occidental (ibid);
8. The fact that it was accused Rene Baron who had guided the police investigators to Kabankalan City, Negros Occidental, a city in the southern portion of Negros Occidental which is about 150 kilometers away from Cadiz City in the north, the scene of the crime; and with the cooperation of the Chief of Police of the former place proceeded to the house of a certain Natividad Camparicio, the aunt of accused Rey Villatima (ibid, pp. 7-8);
9. The fact that Natividad Camparicio affirmed that the stolen motorcycle was brought to her house at around 1:15 in the morning of July 1, 1995 by her nephew, Rey Villatima together with the latter's companions and pinpointed to accused Rene Baron as one of them (ibid, p. 9);
10. The fact that prosecution witness, Police Insp. Eduardo Berena also confirmed they were able to recover the stolen motorcycle which was kept in the ground floor of the house of Mrs. Camparicio (TSN-Guanzon, October 2, 1997, pp. 8-15);
11. The fact that the stolen motorcycle was positively identified by witness Nemia Berallo as the same motorcycle driven, owned and registered in the name of the victim, Juanito Berallo (TSN-Guanzon, October 2, 1997, pp. 9-10);
12. The fact that accused Rene Baron admitted during his testimony that he rode in the tricycle driven by the victim together with the two passengers in going to Segundo Diez but reached only the area of Bangga "Doldol" where the actual robbery and killing took place (TSN-Tan, May 11, 1999, pp. 9-12);
13. The fact that when the two hold-up men brought the driver inside the sugarcane field, accused Rene Baron who was left on the road outside the sugarcane field (ibid, p. 11) did nothing and instead of escaping and seeking help, accused Rene Baron leisurely stayed in the tricycle as if everything [was] normal and nothing [happened], thus indicating that he (Baron) [was] in conspiracy to rob and kill the victim since as the facts are depicted x x x Rene Baron would clearly appear that he (Baron) acted as a "look out" while the two companions were killing the victim and to make matters worse, he (Baron) even went along with the two other accused up to Oringao, Kabankalan City where they hid the stolen motorcycle (ibid, pp. 12-13);

14. The fact that the accused Baron was left unharmed by the killers of the victim in spite of the fact that he (Baron) is a potential witness to the serious crime of Robbery with Homicide; and when they were in Oringao, ate breakfast with them then rode a passenger jeep with many passengers; alighted in Kabankalan proper from Barangay Oringao; stood and waited in a public place at the Ceres Bus Terminal; rode a public transportation bus to Bacolod City for three (3) hours then alighted in Libertad Street in Bacolod City; and again rode a passenger jeepney going to a place known as "Shopping" to take another passenger bus in going back to Cadiz City (ibid, pp. 21-30).

From [this] series of proven circumstantial evidence, the inescapable and natural conclusion is the three accused were in conspiracy with one another to kill the victim and cart away the motorcycle as the combination of these numerous circumstantial evidence [is] enough to produce the strong moral certainty from an unbiased and [unprejudiced] mind to safely conclude that no other persons but the three accused conspired to perpetrate the crime as clearly the series of events indubitably [shows] that there was unity of purpose, concurrence of will, and that they all acted in concert towards the same end, the accused being together with a group when they rode the tricycle of the victim; all of them were together at the scene of the crime, they all rode in the same stolen motorcycle going to Barangay Oringao, Kabankalan City; all of them were together in hiding the stolen motorcycle in the house of Natividad Camparicio; and they were together as a group going to Cadiz City from Kabankalan City passing [through] and stopping [at] various cities and municipalities.[10]

The concerted manner in which the appellant and his companions perpetrated the crime showed beyond reasonable doubt the presence of conspiracy. When a homicide takes place by reason of or on the occasion of the robbery, all those who took part shall be guilty of the special complex crime of robbery with homicide whether they actually participated in the killing, unless there is proof that there was an endeavor to prevent the killing.[11] There was no evidence adduced in this case that the appellant attempted to prevent the killing. Thus, regardless of the acts individually performed by the appellant and his co-accused, and applying the basic principle in conspiracy that the "act of one is the act of all," the appellant is guilty as a co-conspirator. As a result, the criminal liabilities of the appellant and his co-accused are one and the same.[12]

The appellant's attempt to evade criminal liability by insisting that he acted under the impulse of an uncontrollable fear of an equal or greater injury fails to impress. To avail of this exempting circumstance, the evidence must establish: (1) the existence of an uncontrollable fear; (2) that the fear must be real and imminent; and (3) the fear of an injury is greater than or at least equal to that committed.[13] A threat of future injury is insufficient. The compulsion must be of such a character as to leave no opportunity for the accused to escape.[14]

We find nothing in the records to substantiate appellant's insistence that he was under duress from his co-accused in participating in the crime. In fact, the evidence is to the contrary. Villatima and Bargo dragged the victim towards the sugarcane field and left the appellant inside the tricycle that was parked by the roadside. While all alone, he had every opportunity to escape since he was no longer subjected to a real, imminent or reasonable fear. Surprisingly, he opted to wait for his co-accused to return and even rode with them to Kabankalan, Negros Occidental to hide the victim's motorcycle in the house of Villatima's aunt.

The appellant had other opportunities to escape since he traveled with his co-accused for more than 10 hours and passed several transportation terminals. However, he never tried to escape or at least request for assistance from the people around him.

Robbery with Homicide is a single indivisible crime punishable with reclusion perpetua to death under paragraph 1, Article 294 of the Revised Penal Code. We find that the trial court correctly appreciated the aggravating circumstance of treachery, which exists when the offender commits any of the crimes against persons, employing means, methods or forms in the execution thereof that tend directly and specifically to insure its execution without risk to himself arising from the defense that the offended party might make.[15] The evidence points that one of

the co-conspirators tied the hands of the victim before dragging him to the sugarcane field.[16] Thus, he was unable to defend and protect himself against his malefactors who were superior in number and armed with knives and guns.

As thoroughly discussed in *People v. Escote, Jr.*,[17] treachery is not a qualifying circumstance but "a generic aggravating circumstance to robbery with homicide although said crime is classified as a crime against property and a single and indivisible crime".[18] Corollarily, "Article 62, paragraph 1 of the Revised Penal Code provides that in diminishing or increasing the penalty for a crime, aggravating circumstances shall be taken into account. However, aggravating circumstances which in themselves constitute a crime especially punishable by law or which are included by the law in defining a crime and prescribing a penalty therefor shall not be taken into account for the purpose of increasing the penalty".[19] In the case at bar, "treachery is not an element of robbery with homicide".[20] Neither is it "inherent in the crime of robbery with homicide".[21] As such, treachery may be properly considered in increasing the penalty for crime.

In this case, the presence of treachery as a generic aggravating circumstance would have merited the imposition of the death penalty. However, in view of the subsequent passage of Republic Act (RA) No. 9346, entitled "An Act Prohibiting the Imposition of the Death Penalty in the Philippines," we are mandated to impose on the appellant the penalty of reclusion perpetua without eligibility for parole.[22]

In line with current jurisprudence, if the death penalty would have been imposed if not for the proscription in RA 9346, the civil indemnity for the victim shall be P75,000.00.[23] As compensatory damages, the award of P2,400.00 for the burial lot of the victim must be deleted since this expense was not supported by receipts.[24] However, the heirs are entitled to an award of temperate damages in the sum of P25,000.00.[25] The existence of one aggravating circumstance merits the award of exemplary damages under Article 2230 of the New Civil Code. Thus, the award of exemplary damages is proper. However, it must be increased from P25,000.00 to P30,000.00.[26] Moral damages must also be increased from P25,000.00 to P75,000.00.[27] Moreover, the appellant is ordered to return the stolen items that were not recovered. Should this no longer be possible, there must be restitution in the total amount of P5,050.00 representing the cash contained in the victim's wallet, as well as the value of the wrist watch, the ring, the motorcycle and sidecar taken by the appellant and his co-accused.

WHEREFORE, the Decision of the Court of Appeals in CA-G.R. CR HC No. 00638 finding appellant guilty beyond reasonable doubt of Robbery with Homicide and sentencing him to suffer the penalty of reclusion perpetua is AFFIRMED with MODIFICATIONS. The appellant is hereby ordered to pay the heirs of the victim P75,000.00 as civil indemnity; P75,000.00 as moral damages, and P30,000.00 as exemplary damages. Actual damages is DELETED, and in lieu thereof, appellant is ordered to pay temperate damages in the amount of P25,000.00. The appellant is also ordered to return the cash of P5,050.00 taken from the victim's wallet and the other pieces of personal property also taken but not recovered, more particularly his wrist watch, ring, his Kawasaki HDX motorcycle and its sidecar. Should restitution be no longer possible, the appellant must pay the equivalent value of the unreturned items.

SO ORDERED.

Corona, C.J., (Chairperson), Velasco, Jr., Leonardo-De Castro, and Perez, JJ., concur.

[1] Records, pp. 1-3.

[2] Id. at 202-221; penned by Executive Judge Renato D. Munez.

[3] Id. at 221.

[4] CA rollo, pp. 146-166; penned by Associate Justice Amy C. Lazaro-Javier and concurred in by Associate Justices Pampio A. Abarintos and Francisco P. Acosta.

[5] Id. at 61.

[6] *People v. Dela Cruz*, G.R. No. 168173, December 24, 2008, 575 SCRA 412, 436.

[7] *People v. Darilay*, 465 Phil. 747, 767 (2004).

[8] Rules of Court, Rule 133, Section 4.

[9] *People v. Pascual*, G.R. No. 172326, January 19, 2009, 576 SCRA 242, 252.

[10] Records, pp. 212-217.

[11] *People v. Reyes*, 369 Phil. 61, 80 (1999).

[12] *Supra* note 7.

[13] REVISED PENAL CODE, Article 12(6); *People v. Petenia*, 227 Phil. 337, 345 (1986).

[14] *People v. Palencia*, 162 Phil. 695, 711 (1976).

[15] REVISED PENAL CODE, Article 14(16).

[16] TSN, May 11, 1999, p. 10.

[17] 448 Phil 749 (2003).

[18] Id. at 791.

[19] Id.

[20] Id. at 792.

[21] Id.

[22] *People v. Villanueva*, G.R. No. 187152, July 22, 2009, 593 SCRA 523, 547-548. See also *People v. Darilay*, *supra* note 7.

[23] *People v. Villanueva*, *supra*.

[24] *People v. Escote, Jr.*, *supra* note 17 at 796.

[25] *People v. Diaz*, G.R. No. 185841, August 4, 2009.

[26] *Supra* note 7.

[27] Id.

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