

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ALVIN ESUGON Y AVILA, ACCUSED-APPELLANT.

G.R. No. 195244. June 22, 2015

Ponente: BERSAMIN, J.

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BERSAMIN, J.:

Every child is presumed qualified to be a witness. The party challenging the child's competency as a witness has the burden of substantiating his challenge.

Under review is the decision promulgated on July 23, 2010,[1] whereby the Court of Appeals (CA) affirmed with modification the conviction of the appellant for the composite crime of robbery with homicide handed down by the Regional Trial Court (RTC), Branch 211, in Mandaluyong City through its judgment rendered on January 27, 2006.[2]

Antecedents

The information charged the appellant with robbery with homicide, alleging as follows:

That on or about the 22[nd] day of October 2003, in the City of Mandaluyong, Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused, with intent to gain, with the use of a bladed weapon, by means of force and violence, did, then and there, willfully, unlawfully and feloniously take, steal and carry away cash money amounting to P13,000.00 belonging to JOSEPHINE CASTRO y BARRERA, to the damage and prejudice of the latter; that by reason or on occasion of said robbery, accused did, then and there willfully, unlawfully and feloniously attack, assault and stab with the said bladed weapon said JOSEPHINE CASTRO y BARRERA, thereby inflicting upon her physical injuries which directly caused her death.

CONTRARY TO LAW.[3]

The CA adopted the RTC's summation of the evidence of the Prosecution, to wit:

Carl or Muymoy, 5-year old son of the victim, testified that on the night of the incident, he, his younger sister Cheche, and his mother and father, were sleeping on the ground floor of their house. He saw appellant, whom he calls "Nonoy," enter their house and stab her mother with a knife, while he (Carl) peeped through a chair. Although there was no light at the ground floor, there was light upstairs. After his mother got stabbed, his father chased the appellant. Carl saw blood come out of his mother's lower chest. His father then brought her to the hospital. Carl positively identified the appellant, a neighbor who often goes to their house, as the one who stabbed his mother. On cross-examination, he related that the assailant took money from his father's pocket. He likewise admitted that he did not see very well the perpetrator because there was no light (TSN, February 24, 2004, pp. 3, 11-23, 28, 30-32).

Upon being asked by the trial court, Carl stated that although there was no light when his mother was stabbed, he was sure of what he saw since there was light at their second floor, which illumined the ground floor through the stairway (TSN, February 24, 2004, pp. 33-34).

Insp. Marquez, who autopsied the body, related that the cause of the victim's death was hemorrhagic shock due to stab wound. The wound was located at the epigastric region, measuring 2.8 x 0.5 cm. 4 cm from left of the anterior midline, 13 cm deep, directed posterior and upward, piercing the right ventricle of the heart, thoracic aorta and lower lobe of the left lung (TSN, April 21, 2004, pp. 1, 6; Exh. "I," Records, p. 103).

Next to testify was Dennis, husband of the victim. He narrated that he and the victim were married for nine years before the incident and that they have four children: Monica, 11 years old; Mary Joy, 9 years old; Carl, 5 years old; and Cherry Ann, 7 months old. At about 9 p.m. on October 21, 2003, he and his wife were sleeping downstairs in their sala, with their baby, while their other children slept upstairs. Their sala measures 3 by 3 meters. At around 2 a.m., his son Carl woke up crying and went downstairs to sleep with them. Fifteen to thirty minutes later, he heard someone shout "magnanakaw!" [H]e turned on the light and saw that their door was open. He got their bolo and ran outside. When he did not see anybody, he returned and heard his wife moaning. He embraced and carried her and saw blood on her back. He shouted for help and his brother-in law helped him bring the victim to the hospital where she eventually died. He spent P23,000.00 for the funeral and P44,500.00 for the wake and burial. On cross-examination, he admitted that he has no personal knowledge as to who stabbed his wife since he did not actually see the perpetrator and that it was his son who saw the appellant (TSN, August 25, 2004, pp. 3-12; October 6, 2004, pp. 5-6; November 17, 2004, pp. 3-4).

Sharon, sister-in-law of the victim, testified that she and her husband were sleeping upstairs when they were roused from their sleep at around 2 a.m. of October 22, 2003 by Dennis' cry for help. She saw that there was blood on the victim's chest. After the victim was brought to the hospital, she noticed that the victim's children were trembling in fear and were crying. They got outside and went to the billiard hall in front of their house. She took Carl and had him sit on her lap. Then Carl said, "Tita, sya pasok bahay namin" pointing to someone but she did not see who it was since there were many people passing by. Later, the police asked Carl whether he saw somebody enter their house and he answered yes and demonstrated how his mother was stabbed. Carl also said that the person who stabbed his mother was present in the vicinity. He then pointed to appellant and said "siya po yung pumasok sa bahay namin." As a resident there, appellant often goes to the billiard hall and sometimes watches the television at the house of the victim (TSN, February 9, 2005, pp. 3-14).

PO1 Fabela also testified that after it was reported to him that there was a stabbing incident, he went to the hospital then to the crime scene and interviewed the persons thereat. Later, Carl pinpointed and positively identified the appellant as the one who stabbed his mother and robbed them of their money. Appellant was arrested and brought to the police station (TSN, March 16, 2005, pp. 2, 5-6).

PO2 Sazon meanwhile testified that while he was questioning people in the area, Carl pointed to them the suspect who was one of the bystanders. They were asking Carl questions when he suddenly blurted out that it was appellant who entered their house and stabbed his mother. They invited the appellant to the police station but the latter denied having committed the crime. On cross-examination, the witness admitted that their basis in arresting appellant was the information relayed by Carl (TSN, April 27, 2005, pp. 2, 12-17; June 15, 2005, p. 5).[4]

In turn, the appellant denied the accusation. According to him, he had frequented the victim's billiard hall, which was situated only four houses away from where he lived, and, on the evening in question, he had been the last to leave the billiard hall at 11 o'clock p.m. and had then gone home. He recalled that he had been roused from slumber by screams for help around two o'clock a.m., prompting him to ask his mother for the key to the door; that he had then gone outside where he learned of the killing of the victim; that police officers had later on approached him to inquire what he knew about the killing because they told him that Carl, the young son of the victim, had pointed to him as the perpetrator, making him the primary suspect; that he had replied that he had had nothing to do with the crime; and that he had assured the police officers that he had never been involved in any wrongdoing in his years of living in the neighborhood.

The appellant's mother corroborated his version.[5]

Judgment of the RTC

As mentioned, the RTC pronounced the appellant guilty of the crime charged under its judgment rendered on January 27, 2006,[6] disposing:

WHEREFORE, premises considered, finding the accused ALVIN ESUGON y AVILA @ "NONOY" GUILTY beyond reasonable doubt of the crime of ROBBERY WITH HOMICIDE under Article 293 and punished under Article 294 (1) of the Revised Penal Code, the court hereby sentences him to Reclusion Perpetua and to indemnify the heirs of JOSEPHINE CASTRO y BARRERA as follows:

- 1) P50,000.00 civil indemnity;
- 2) P57,500.00 as actual damages;
- 3) P50,000.00 as moral damages.

SO ORDERED.[7]

Decision of the CA

On appeal, the appellant argued that the RTC erred in finding him guilty beyond reasonable doubt of the composite crime of robbery with homicide based solely on the testimony of Carl, a 5-year old witness whose recollections could only be the product of his imagination.[8]

On July 23, 2010, however, the CA, giving credence to the child witness, and opining that his inconsistencies did not discredit his testimony, affirmed the conviction of the appellant,[9] ruling thusly:

WHEREFORE, the appeal is DENIED for lack of merit. The Decision dated January 27, 2006 of the Regional Trial Court, Branch 211 of Mandaluyong City in Crim. Case No. MC03-7597, is hereby AFFIRMED with the MODIFICATION in that the award of P57,500.00 as actual damages should be DELETED and in lieu thereof, temperate damages in the amount of P25,000.00 should be AWARDED the heirs of Josephine Castro y Barrera.

SO ORDERED.[10]

Issues

In this appeal, the appellant posits that the adverse testimony of the 5-year old Carl, being filled with inconsistencies, was not credible, but doubtful; that unlike him, his sisters, who were then at the second floor of the house, were not roused from sleep; that contrary to Carl's recollection, the place was not even dark when the stabbing attack on the victim occurred because his father said that he had turned the light on upon hearing somebody shouting "Magnanakaw!;" and that his father had then gotten his bolo, and gone outside the house.[11]

Moreover, the appellant maintains that the Prosecution did not prove that violence or intimidation was employed in the course of the robbery. He argues that he could not be held liable for robbery by using force upon things considering that the culprit had neither broken any wall, roof, floor, door or window to gain entry in the house nor entered the house through an opening not intended for entrance. If at all, he could be liable only for the separate crimes of theft and homicide, not of the composite crime of robbery with homicide.[12]

The Office of the Solicitor General (OSG) counters that the evidence showed that the appellant's principal intent had been to rob the victim's house, with the homicide being perpetrated as a mere incident of the robbery; and that Carl positively identified the appellant as the person who had stabbed the victim, his identification bearing "all the

earmarks of credibility especially when he has no motive for lying about the identity of the accused." [13]

Ruling of the Court

The appeal is bereft of merit.

The most important task of the State in the successful prosecution of the accused is his credible and competent identification as the perpetrator of the crime. Hence, this appeal turns on whether or not the identification of the appellant as the perpetrator of the robbery with homicide was credible and competent considering that the identifying witness was Carl, a 5-year old lad, whose sole testimony positively pointed to and incriminated the appellant as the person who had entered their home, robbed the family, and killed his mother.

The qualification of a person to testify rests on the ability to relate to others the acts and events witnessed. Towards that end, Rule 130 of the Rules of Court makes clear who may and may not be witnesses in judicial proceedings, to wit:

Section 20. Witnesses; their qualifications. - Except as provided in the next succeeding section, all persons who can perceive, and perceiving, can make known their perception to others, may be witnesses.

Religious or political belief, interest in the outcome of the case, or conviction of a crime unless otherwise provided by law, shall not be a ground for disqualification. (18a)

Section 21. Disqualification by reason of mental incapacity or immaturity. - The following persons cannot be witnesses:

(a) Those whose mental condition, at the time of their production for examination, is such that they are incapable of intelligently making known their perception to others;

(b) Children whose mental maturity is such as to render them incapable of perceiving the facts respecting which they are examined and of relating them truthfully. (19a)

As the rules show, anyone who is sensible and aware of a relevant event or incident, and can communicate such awareness, experience, or observation to others can be a witness. Age, religion, ethnicity, gender, educational attainment, or social status are not necessary to qualify a person to be a witness, so long as he does not possess any of the disqualifications as listed the rules. The generosity with which the Rules of Court allows people to testify is apparent, for religious beliefs, interest in the outcome of a case, and conviction of a crime unless otherwise provided by law are not grounds for disqualification. [14]

That the witness is a child cannot be the sole reason for disqualification. The dismissiveness with which the testimonies of child witnesses were treated in the past has long been erased. Under the Rule on Examination of a Child Witness (A.M. No. 004-07-SC 15 December 2000), every child is now presumed qualified to be a witness. To rebut this presumption, the burden of proof lies on the party challenging the child's competency. Only when substantial doubt exists regarding the ability of the child to perceive, remember, communicate, distinguish truth from falsehood, or appreciate the duty to tell the truth in court will the court, *motu proprio* or on motion of a party, conduct a competency examination of a child. [15]

The assessment of the credibility of witnesses is within the province of the trial court. [16] All questions bearing on the credibility of witnesses are best addressed by the trial court by virtue of its unique position to observe the crucial and often incommunicable evidence of the witnesses' deportment while testifying, something which is denied to the appellate court because of the nature and function of its office. The trial judge has the unique advantage of actually examining the real and testimonial evidence, particularly the demeanor of the witnesses. Hence, the trial judge's assessment of the witnesses' testimonies and findings of fact are accorded great respect on

appeal. In the absence of any substantial reason to justify the reversal of the trial court's assessment and conclusion, like when no significant facts and circumstances are shown to have been overlooked or disregarded, the reviewing court is generally bound by the former's findings. The rule is even more stringently applied if the appellate court has concurred with the trial court.[17]

The appellant did not object to Carl's competency as a witness. He did not attempt to adduce evidence to challenge such competency by showing that the child was incapable of perceiving events and of communicating his perceptions, or that he did not possess the basic qualifications of a competent witness. After the Prosecution terminated its direct examination of Carl, the appellant extensively tested his direct testimony on cross-examination. All that the Defense did was to attempt to discredit the testimony of Carl, but not for once did the Defense challenge his capacity to distinguish right from wrong, or to perceive, or to communicate his perception to the trial court. Consequently, the trial judge favorably determined the competency of Carl to testify against the appellant.

The appellant points to inconsistencies supposedly incurred by Carl. That is apparently not disputed. However, it seems clear that whatever inconsistencies the child incurred in his testimony did not concern the principal occurrence or the elements of the composite crime charged but related only to minor and peripheral matters. As such, their effect on his testimony was negligible, if not nil, because the inconsistencies did not negate the positive identification of the appellant as the perpetrator. Also, that Carl did not shout to seek help upon witnessing how the appellant had stabbed his mother to death did not destroy his credibility. For sure, he could not be expected to act and to react to what happened like an adult. Although children have different levels of intelligence and different degrees of perception, the determination of their capacity to perceive and of their ability to communicate their perception to the courts still pertained to the trial court, because it concerned a factual issue and should not be disturbed on appeal in the absence of a strong showing of mistake or misappreciation on the part of the trial court.[18]

It is true that an appeal in a criminal case like this one opens the record of the trial bare and open. Even so, the finding of facts by the trial court are still entitled to great respect especially when affirmed on appeal by the CA.[19] This great respect for such findings rests mainly on the trial court's direct and personal access to the witnesses while they testify in its presence, giving them the unique opportunity to observe their manner and decorum during intensive grilling by the counsel for the accused, and to see if the witnesses were fidgeting and prevaricating, or sincere and trustworthy. With both the RTC and the CA sharing the conviction on Carl's credibility, his capacity to perceive and his ability to communicate his perception, we cannot depart from their common conclusion. Moreover, according credence to Carl's testimony despite his tender age would not be unprecedented. In *People v. Mendiola*,[20] the Court considered a 6-year-old victim competent, and regarded her testimony against the accused credible. In *Dulla v. Court of Appeals*,[21] the testimony of the three-year-old victim was deemed acceptable. As such, Carl's testimony was entitled to full probative weight.

Carl positively identified the appellant as the culprit during the investigation and during the trial. Worthy to note is that the child could not have been mistaken about his identification of him in view of his obvious familiarity with the appellant as a daily presence in the billiard room maintained by the child's family. Verily, the evidence on record overwhelmingly showed that the appellant, and no other, had robbed and stabbed the victim.

The appellant contends that robbery was not proved beyond reasonable doubt; that to sustain a conviction for robbery with homicide, the robbery itself must be proven as conclusively as the other essential element of the crime; and that it was not established that the taking of personal property was achieved by means of violence against or intimidation of any person or by using force upon things.

The contention lacks persuasion.

To sustain a conviction for robbery with homicide, the Prosecution must prove the concurrence of the following elements, namely: (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) the crime of homicide, as used in the generic sense, was committed on the occasion or by reason of the robbery.[22] A conviction requires certitude that the robbery is the main objective of the malefactor, and the killing is merely incidental to the robbery.[23]

The CA has indicated that the appellant carried a long-bladed weapon. The fact that the appellant was armed with the long-bladed weapon, which was undoubtedly a deadly weapon, competently proved the presence of violence or intimidation against persons that qualified the offense as robbery instead of theft. For sure, too, the patent intent of the appellant was originally to commit robbery, with the homicide being committed only in the course or on the occasion of the perpetration of the robbery. As the records show, Dennis was awakened by someone shouting "Magnanakaw!" The shout was most probably made by the victim, whom the appellant then stabbed in order to facilitate his escape. Considering that the original criminal design to rob had been consummated with the taking of the money amounting to P13,000.00, the killing of the victim under the circumstances rendered the appellant guilty beyond reasonable doubt of robbery with homicide.

Robbery with homicide is a composite crime, also known as a special complex crime. It is composed of two or more crimes but is treated by law as a single indivisible and unique offense for being the product of one criminal impulse. It is a specific crime with a specific penalty provided by law, and is to be distinguished from a compound or complex crime under Article 48 of the Revised Penal Code.[24] A composite crime is truly distinct and different from a complex or compound crime. In a composite crime, the composition of the offenses is fixed by law, but in a complex or compound crime, the combination of the offenses is not specified but generalized, that is, grave and/or less grave, or one offense being the necessary means to commit the other. In a composite crime, the penalty for the specified combination of crimes is specific, but in a complex or compound crime the penalty is that corresponding to the most serious offense, to be imposed in the maximum period. A light felony that accompanies the commission of a complex or compound crime may be made the subject of a separate information, but a light felony that accompanies a composite crime is absorbed.

The aggravating circumstances of dwelling and nighttime are not appreciated to raise the penalty to be imposed because the information did not specifically allege them. But they should be appreciated in order to justify the grant of exemplary damages to the heirs of the victim in the amount of P30,000.00 in accordance with relevant jurisprudence.[25] Under Article 2230 of the Civil Code, exemplary damages may be granted if at least one aggravating circumstance attended the commission of the crime. The aggravating circumstance for this purpose need not be specifically alleged in the information, and can be either a qualifying or attendant circumstance. As expounded in *People v. Catubig*: [26]

The term "aggravating circumstances" used by the Civil Code, the law not having specified otherwise, is to be understood in its broad or generic sense. The commission of an offense has a two-pronged effect, one on the public as it breaches the social order and the other upon the private victim as it causes personal sufferings, each of which is addressed by, respectively, the prescription of heavier punishment for the accused and by an award of additional damages to the victim. The increase of the penalty or a shift to a graver felony underscores the exacerbation of the offense by the attendance of aggravating circumstances, whether ordinary or qualifying, in its commission. Unlike the criminal liability which is basically a State concern, the award of damages, however, is likewise, if not primarily, intended for the offended party who suffers thereby. It would make little sense for an award of exemplary damages to be due the private offended party when the aggravating circumstance is ordinary but to be withheld when it is qualifying. Withal, the ordinary or qualifying nature of an aggravating circumstance is a distinction that should only be of consequence to the criminal, rather than to

the civil, liability of the offender. In fine, relative to the civil aspect of the case, an aggravating circumstance, whether ordinary or qualifying, should entitle the offended party to an award of exemplary damages within the unbridled meaning of Article 2230 of the Civil Code.[27]

In line with current jurisprudence,[28] we increase the civil indemnity to P75,000.00, and the moral damages to P75,000.00.

In addition to the damages awarded by the CA, the appellant should be liable to pay the heirs of the victim interest at the legal rate of 6% per annum on all the monetary awards for damages from the date of the finality of this decision until the awards are fully paid.

WHEREFORE, the Court AFFIRMS the decision promulgated on July 23, 2010 subject to the MODIFICATIONS that then accused-appellant ALVIN ESUGON y AVILA shall pay to the heirs of the late Josephine Castro y Barrera civil indemnity of P75,000.00; moral damages of P75,000.00; exemplary damages of P30,000.00; temperate damages of P25,000.00; and interest at the legal rate of 6% per annum on all monetary awards for damages reckoned from the date of the finality of this decision until the awards are fully paid, plus the costs of suit.

The accused-appellant is ORDERED to pay the costs of suit.

SO ORDERED.

Sereno, C.J., Leonardo-De Castro, Perez, and Perlas-Bernabe, JJ., concur.

[1] Rollo, pp. 2-20: penned by Associate Justice Jose C. Reyes Jr., with the concurrence of Associate Justice Antonio L. Villamor (retired), and Associate Justice Ruben C. Ayson (retired).

[2] CA rollo, pp. 23-39.

[3] Id. at 9.

[4] Rollo, pp. 3-6.

[5] Id. at 6-7.

[6] Supra note 2.

[7] CA rollo, p. 39.

[8] Rollo, p. 8.

[9] Supra note 1.

[10] Id. at 20.

[11] Id. at 7-8.

[12] Id.

[13] Id. at 9.

[14] Cavili v. Judge Florendo, No. L-68680, October 9, 1987, 154 SCRA 610, 615.

[15] People v. Hermosa, G.R. No. 131805, September 07, 2001, 364 SCRA 648, 660.

- [16] *People v. Abaigar*, G.R. No. 199442, April 7, 2014; *People v. Bisda*, G.R. No. 140895, July 17, 2003, 406 SCRA 454.
- [17] *People v. Barcelá*, G.R. No. 208760, April 23, 2014.
- [18] *Bernardo v. Court of Appeals*, G.R. No. 101680, December 7, 1992, 216 SCRA 224, 232.
- [19] *Castillo v. Court of Appeals*, G.R. No. 106472, August 7, 1996, 260 SCRA 374, 381.
- [20] G.R. No. 134846, August 8, 2000, 337 SCRA 418.
- [21] G.R. No. 123164, February 18, 2000, 326 SCRA 32.
- [22] *People v. Algarme*, G.R. No. 175978, February 12, 2009, 578 SCRA 602, 621.
- [23] *People v. Daniela*, G.R. No. 139230, April 24, 2003, 401 SCRA 519, 534.
- [24] Article 48. Penalty for complex crimes. - When a single act constitutes two or more grave or less grave felonies, or when an offense is a necessary means for committing the other, the penalty for the most serious crime shall be imposed, the same to be applied in its maximum period.
- [25] *People v. Barra*, G.R. No. 198020, July 10, 2013, 701 SCRA 99.
- [26] G.R. No. 137842, August 23, 2001, 363 SCRA 621.
- [27] *Id.* at 635.
- [28] *People v. Arbalate*, G.R. No. 183457, September 17, 2009, 600 SCRA 239, 255.

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