

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
BERNARDINO PERALTAJ MORILLO AND MICHAEL AMBAS Y REYES,
ACCUSED,**

G.R. No. 208524. June 01, 2016

Ponente: DEL CASTILLO, J.

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DEL CASTILLO, J.:

This is an appeal from the November 28, 2012 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 05031 which affirmed the December 20, 2010 Decision[2] of Branch 95, Regional Trial Court (RTC) of Quezon City, in Criminal Case No. Q-07-147414, finding appellant Bernardino Peralta y Morillo (Peralta) and accused Michael Ambas y Reyes (Ambas) guilty beyond reasonable doubt of the crime of Robbery with Homicide defined and penalized in Article 294, paragraph 1 of the Revised Penal Code (RPC) and sentencing them to suffer the penalty of reclusion perpetua.

Proceedings before the Regional Trial Court

Peralta and Ambas were charged with the crime of Robbery with Homicide for shooting Supt. Joven Bocalbos y Canas (Bocalbos) in the head during an armed robbery committed inside the latter's own passenger van for hire on the night of May 23, 2007. The charge against Peralta and Ambas stemmed from the following Information:

That on or about 23[rd] day of May, 2007 in Quezon City, Philippines, the said accused, conspiring and confederating with three (3) other persons whose true names, identities and whereabouts have not as yet been ascertained and mutually helping one another, armed with firearms, with intent to gain and by means of force, violence against and intimidation of persons, did then and there willfully, unlawfully, and feloniously rob Supt. Joven Bocalbos y Canas and Norberto Olitan Jr. y Espajos, in the following manner, to wit: while complainant Supt. Joven Bocalbos y Canas was driving his vehicle a Nissan Urban Van with plate No. XED-744 loaded with passengers cruising along Commonwealth Avenue, and at Dona Carmen Subdivision, Fairview, this City, the said accused who posed themselves as passengers of the said van, at gun point announced a holdup and thereafter rob, steal and carry away the following personal belongings, to wit:

Norberto Olitan's Cellphone a Nokia 6610i worth P12,000.00,
Silver ring worth P1,500.00
Shades worth P100.00 and
Cash money amounting to P600.00 and
Supt. Joven Bocalbos' .45 Caliber pistol
Nokia 6600 Cellphone
Some cash money of undetermined amount

That on the occasion or by reason of the offense of robbery and for the purpose of enabling the said accused to take, steal and carry away the aforesaid properties, the said accused with intent to kill, taking advantage of their superior strength attack, assault and employ personal violence upon SUPT. JOVEN BOCALBOS y CANAS, driver of the said van, by then and there shooting him on the head, thereby inflicting upon him mortal gunshot

wound which was the direct and immediate cause of his death thereafter. To the damage and prejudice of NORBERTO OLITAN and the heirs of Supt. Joven Bocalbos.

CONTRARY TO LAW.[3]

Both Peralta and Ambas pleaded not guilty to the crime charged during their arraignment. At the pre-trial conference, the prosecution and the defense did not enter into any stipulation of facts or admissions.

Version of the Prosecution

The prosecution presented the following witnesses: Ma. Christina Bocalbos, the widow of the victim Bocalbos; Norberto Olitan, Jr. (Olitan), an eyewitness to the crime and a passenger in Bocalbos' van; and SPO3 Reynaldo Reyes (SPO3 Reyes), a police officer assigned at the Criminal Investigation and Detection Unit (CIDU), Camp Karingal, Quezon City. Their collective testimonies tended to establish these facts:

On May 23, 2007, at around 8:30 p.m., Bocalbos, the Deputy Chief of the Makati Police District, was driving his Nissan Urvan and transporting passengers as a means of earning extra income. While the van was cruising along Commonwealth Avenue, Quezon City, one of the passengers suddenly announced, "Hold-up walang kikilos nang masama!"[4] Consequently, Bocalbos stopped the van near the Fairview Market along the Doña Carmen Subdivision, Quezon City. An armed passenger then ordered him to vacate the driver's seat and move to the rear portion of the van. Another passenger, who was later identified as the appellant Peralta, took over the steering wheel and drove the van through a U-turn slot. After executing a U-turn, Peralta, using a firearm, shot Bocalbos in the head. Peralta's cohorts then took the valuables of the passengers. One of them, afterwards identified as the accused Ambas, took Olitan's cellphone, silver ring, sunglasses, and cash money.

After divesting the passengers of their valuables, the assailants debated about where the van should be taken. One of the robbers then asked the passengers who among them knew how to drive a vehicle. Out of fear, Olitan answered in the affirmative. He then drove the van to Shaw Boulevard at Mandaluyong City where the assailants alighted. Thereafter, Olitan brought Bocalbos to the M-tech Medical Center, but it was too late as the latter was declared dead on arrival due to the gunshot wound he suffered.

The following day, or on May 24, 2007, Dr. Filemon Porciuncula, a medico-legal officer assigned at the Central Police District Crime Laboratory in Quezon City, conducted an autopsy on Bocalbos' body. The autopsy showed that the cause of death of the victim was the gunshot wound in the head.

The CIDU of Camp Karingal, Quezon City conducted an investigation into the case. SPO3 Reyes of that unit was tasked to conduct a follow-up operation to identify the suspects in the killing of Bocalbos. SPO3 Reyes' team then summoned assets and informants from Sitio San Roque, Barangay Pag-asa, Quezon City. The informants were shown two cartographic sketches based on the description provided by Olitan. One of the assets recognized the suspects in the sketch as Peralta and Ambas. SPO3 Reyes and his team then proceeded to Barangay Pag-asa in Quezon City, where they found a person who matched the cartographic sketch. This person was then invited to the police station for further investigation.

Olitan and Edwin Camatoy (Camatoy), the van conductor, were invited to the police station to identify the suspects in a police line-up. Olitan recognized two persons in the line-up who were identified as the assailants, Peralta and Ambas. Camatoy, on the other, hand, was able to identify Peralta as one of the perpetrators of the crime.

Version of the Defense

The defense presented Ernesto Reyes (Reyes), Ambas's co-worker at the Gerson Taxi Company, as well as Peralta

and Ambas.

Reyes testified that he was employed as a stay-in air-conditioner technician at the Gerson Taxi Company where he had been working for over 20 years; that on May 23, 2007, at around 7:30 p.m., Ambas reported for work as a taxi driver at the Gerson's taxi compound; that he (Reyes) for his part promptly left the garage soon afterward to begin his duty; that at around 9:00 p.m., he (Reyes) saw Ambas return to the compound due to a defective air-conditioning unit in his taxi cab; that he (Reyes) feed the air-conditioning unit for about 15 to 20 minutes; and that thereafter, Ambas drove out of the compound again.

Ambas denied the charges against him. He claimed that on May 23, 2007, at around 7:45 p.m., he drove his taxi cab, as evidenced by a garage dispatch record; that after driving a passenger to his destination, he went to a gas station to fill up his taxi cab's LPG tank; that he then went back to the company garage to have his air-conditioning unit checked and repaired; and that he thereafter drove his taxi the whole night until the following morning at around 6:00 to 7:00 a.m.

Moreover, Ambas averred that the next day, he went to Dan Fortaleza's (Fortaleza) house at Agham, San Roque, Quezon City so that the latter could accompany him to redeem his confiscated driver's license; that he arrived at Fortaleza's house at around 10:15 a.m.; that while having lunch there, several police officers came and started searching Fortaleza's house; and that he was then arrested and brought to Camp Karingal, Quezon City for investigation.

Peralta also denied any participation in the killing of Bocalbos nor in the robbing of the passengers of the latter's van. He claimed that on the night of May 23, 2007, he was in the house of his second wife at Barangay Silangan in Quezon City; that the following morning, he went to Balintawak market in Caloocan City to buy fruits for his business; and that he returned to his house soon thereafter.

Peralta claimed that on May 24, 2007, while buying food in a store, he was arrested by police officers and brought to Camp Karingal, Quezon City along with another store customer.

Ruling of the Regional Trial Court

On December 20, 2010 the RTC of Quezon City, Branch 95 rendered its Decision^[5] finding Peralta and Ambas guilty beyond reasonable doubt of the crime of Robbery with Homicide and accordingly sentenced them to suffer the penalty of imprisonment of reclusion perpetua.

The dispositive part of the RTC's Decision reads:

WHEREFORE, the Court finds the accused BERNARDINO PERALTA y MORILLO and MICHAEL AMBAS y REYES 'GUILTY' beyond reasonable doubt of the crime of Robbery with Homicide defined and punished in Article 294, paragraph 1 of the Revised Penal Code, and hereby sentences each one of them to suffer the penalty of RECLUSION PERPETUA; and to pay jointly and severally, the heirs of the deceased Joven Bocalbos y Canas x x x the sum of Php50,000.00 as civil indemnity; and the further sums of Php79,000.00 as burial expeases, Php50,000.00 as moral damages, Php5,052,180.00 as unearned income and to pay the costs; and finally to pay private complainant Norberto Olitan the amount of Php3,000.00 as temperate damages in lieu of the actual damages.

IT IS SO ORDERED.^[6]

Ruling of the Court of Appeals

On November 28, 2012, the CA affirmed the Decision of the RTC. Rejecting Peralta's and Ambas's bare alibis and denials, the CA found that Olitan, a passenger in the ill-fated van then driven by Bocalbos, had sufficiently

established the identities of the malefactors. The CA noted that Olitan was able to see the faces of the malefactors inside the passenger van. The CA held that Olitan's physical proximity to the malefactors at the time of the robbery-killing allowed him to have a good look at their faces; and that there was no showing that he had ill motive or bias against both malefactors. As such, it held that Olitan's testimony is entitled to full faith and credit.

On the other hand, the CA gave short shrift to the two accused's denials and alibis. The CA held that their mere disavowals cannot prevail over the positive testimony of the prosecution witness Olitan who identified both accused as culprits. The CA stressed that it was not physically impossible at all for Peralta and for Amba to be at the crime scene during or at the time the crime was committed. Thus, the CA disposed of the case in the following manner:

WHEREFORE, the instant appeal is DENIED. The Decision dated December 20, 2010 of the Regional Trial Court, Branch 95, Quezon City, in Criminal Case No. Q-07-147414 is AFFIRMED.

SO ORDERED.[7]

Amba opted not to appeal his judgment of conviction. Accordingly, an Entry of Judgment was made of that fact by the CA.[8]

Assignment of Errors

Before us, the Office of the Solicitor General and the appellant, Peralta manifested that they would adopt the pleadings filed in the CA in lieu of supplemental briefs.

In his Appellant's Brief,[9] Peralta contends that the CA gravely erred in convicting him of the crime of Robbery with Homicide despite the prosecution's failure to prove his guilt beyond reasonable doubt; that under the totality of circumstances test, the following factors should be considered in resolving the admissibility of the suspects' identification: (1) the witness' opportunity to view the criminal at the time of the crime; (2) the witness' degree of attention at that time; (3) the accuracy of any prior description given by the witness; (4) the level of certainty demonstrated by the witness at the identification; (5) the length of time between the crime and the identification; and (6) the suggestiveness of the identification procedure.[10]

According to Peralta, the prosecution failed to conclusively establish the identity of the assailants in this case. He argues that since the robbery was staged at around 8:00 p.m. with the lights inside the van turned off, Olitan had a very limited opportunity to view or perceive what was happening inside the van; and hence, Olitan's testimony identifying the two accused as the perpetrators of the crime cannot support a judgment of conviction.

Our Ruling

After a careful review of the records of the case, we affirm the ruling of both the RTC and the CA finding appellant Peralta guilty beyond reasonable doubt of the crime of Robbery with Homicide.

The crime of Robbery with Homicide is defined and penalized under Article 294 of the RPC, which provides:

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:

1. The penalty of reclusion perpetua to death, when by reason or on occasion of the robbery, the crime of homicide shall have been committed; or when the robbery shall have been accompanied by rape or intentional mutilation or arson.

x x x x

In *People v. Barra*,^[11] this Court enumerated the elements that the prosecution needs to prove in order to convict

an accused of the crime of Robbery with Homicide, to wit:

1. The taking of personal property is committed with violence or intimidation against persons;
2. The property taken belongs to another;
3. The taking is with *animo lucrandi*; and
4. By reason of the robbery or on the occasion thereof, homicide is committed.

In this case, all the above-mentioned elements had been sufficiently proven by the prosecution. The taking of Olitan's property was committed with violence and intimidation. This taking happened after Peralta and Ambas announced a hold-up in order to rob the passengers of the van of their valuables. Olitan had no choice but to hand over his cellphone, silver ring, sunglasses, and cash money to Ambas who was pointing a gun at him. And undoubtedly, homicide was also committed when Bocalbos was shot in the head on the occasion of that robbery.

We thus fully agree with the RTC that all the elements of the crime of robbery with homicide had been duly established, viz.:

x x x [T]he prosecution ably established the identities] of two (2) of the perpetrators through prosecution witness Norberto Olitan. Witness Norberto Olitan identified one Michael Ambas (herein accused) as the person who was beside him inside the van and took his belongings; and one Bernardino Peralta (herein accused) as the person who took control of the van from the driver, victim Joven Bocalbos and drove it; and the person/driver of the van' whom he replaced in driving the van at Shaw Boulevard.

From the above discussion, there is no doubt that the crime of Robbery with. Homicide was indeed committed by the accused. It can be conclusively drawn from the actions of the accused that their main intention was to rob the [van's] driver and his passengers, and that on the occasion of the robbery, a homicide was committed.[12]

Nonetheless in their appeal before the CA, the two accused challenged the testimony of Olitan. Both insisted that since the lights inside the van were turned off during the execution of the crime it was impossible for Olitan to see the faces of the malefactors and identify them with certainty. Moreover, since Olitan was leaning on the van's headrest and was not allowed to move his head, he was not in a position to see the faces of the malefactors.[13]

These arguments are clearly untenable.

We can find no fault with the CA's appreciation of the evidence that despite the fact that the lights inside the van were turned off, the street lights and the lights coming from passing vehicles were adequate to provide illumination for purposes of recognition and identification.[14] But even with the lights turned off, this does not mean however that in this case it was pitch black inside the van. Passengers with normal eyesight inside a motor vehicle can still see the face of the person seated, near or next to him/her.

In this case, it was indubitably established that Olitan was very near Ambas when the latter took the former's personal effects. Olitan had also a person-to-person encounter with Peralta when he was asked to drive the van along Shaw Boulevard. Tills person-to-person encounter between Olitan and the two malefactors afforded the former the distinct opportunity to recognize and identify these malefactors. This Court has previously held that:

x x x It is the most natural reaction for victims of criminal violence to strive to see the looks and faces of their assailants and observe the manner in which the crime was committed. Most often the face of the assailant and body movements thereof, create a lasting impression which cannot be easily erased from their memory.[15]

Against the prosecution's solid and unassailable position, all that the two accused could come up with is the

defense of alibi and denial. Peralta claimed that he could not have committed the crime imputed against him because at the time the crime was committed, he was allegedly at the house of his second wife.[16] Ambas, on the other hand, claimed that he was on duty driving his taxi cab at time the crime was committed.

It is settled that "[f]or alibi to prosper, it is not enough for the defendant to prove that he was somewhere else when the crime was committed; he must likewise demonstrate that it is physically impossible for him to be at the scene of the crime at the time." [17] If there is the least possibility of his presence at the locus criminis, the defense of alibi will not prosper. And with respect to mere denial as a defense, the rule is that this plea cannot prevail over the positive testimony of an eyewitness to the crime. Here, Olitan positively identified Peralta and his co-accused Ambas as the authors of the Robbery with Homicide.

All told, we find that both the RTC and the CA correctly convicted appellant of the crime of Robbery with Homicide. Anent the awards as civil indemnity and damages, we rule that certain modifications are in order, however. This Court finds that the awards of civil indemnity and moral damages in favor of BocMbos' heirs should be increased from Php50,000.00 to Php75,000.00 to conform with prevailing jurisprudence,[18] In addition, exemplary damages in the amount of Php75,000.00 is awarded. Finally, interest at the rate of 6% per annum on all damages awarded is imposed from the date of finality of this Decision until fully paid.

This Court sustains the award of actual damages in the amount of Php79,000.00, which represents actual expenses incurred for the burial of the victim. Also in order was the award of damages for loss of earning capacity in the amount of Php5,052,180.00 vis-a-vis its computation by the RTC. Likewise proper is the RTC's award of temperate damages in the amount of Php3,000.00 to Olitan, as no receipts were presented during trial to prove the actual costs of the items taken from him. Under Article 2224 of the Civil Code, temperate damages may be recovered when the court finds that some pecuniary loss had been suffered but its amount cannot, from the nature of the case, be proved with certainty. We chose not to interfere with the RTC's exercise of its discretion on this matter.

WHEREFORE, the appeal is DISMISSED. The November 28, 2012 Decision of the Court of Appeals in CA-G.R. CR-H.C. No. 05031 affirming the December 20, 2010 Decision of the Regional Trial Court of Quezon City, Branch 95 in Criminal Case No. Q-07-L47414 finding appellant Bernardino Peralta y Morillo and his co-accused Michael Ambas y Reyes guilty beyond reasonable doubt of the special complex crime of Robbery with Homicide and sentencing them to suffer the penalty of reclusion perpetua is AFFIRMED with MODIFICATIONS that the awards of civil indemnity and moral damages are increased to Php75,000.00 each. In addition, exemplary damages in the amount of Php75,000.00 is awarded to the heirs of Joven Bocalboso Canas.

All monetary awards shall earn interest at the rate of six percent (6%) per annum from the date of finality of this Decision until fully paid.

SO ORDERED.

Carpio, (Chairperson) Mendoza, and Leonen, JJ., concur.
Brion, J., on official leave.

[1] CA rollo, pp. 176-199; penned by Associate Justice Franchito N. Diamante and concurred in by Associate Justices Celia C. Librea-Leagogo and Melchor Q. C. Sadang.

[2] Records, pp. 349-365, penned by Presiding Judge Henri Jean Paul B. Luting.

[3] Records, p. 1-3.

[4] TSN, February 26, 2008, p. 10.

[5] Records, pp. 349-365.

[6] Id. at 363.

[7] CA rollo, p]93.

[8] Id. at 218.

[9] Id. at 99-116.

[10] Id. at 105 citing *People v. Pineda*, 473 Phil, 517, 539-540 (2004).

[11] G.R. No. 198020, July 10, 2013, 701 SCRA 99, 106-107. citing *People v. Ouemeggen*, 611 Phil. 487 (2009).

[12] Records, p. 362.

[13] CA rollo, p. 106.

[14] Id. at 188.

[15] *People v. Dolar*, G.R. No. 100805, March 24, 1994, 231 SCRA 414, 423, citing *People v. Sartagoda*, G.R. No. 97525, April 7, 1993, 221 SCRA 251, 257.

[16] TSN, April 20, 2010, pp. 13-14.

[17] *People v. Madeo*, 617 Phil. 638, 660 (2009).

[18] *People v. Balute*, G.R. No. 212932, January 21, 2015; *People v. Jugueta*, G.R. No. 202124, April 5, 2016.

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