

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. DOMINGO SALAZAR Y SEROMA ALIAS “INGGO,” MONCHITO GOTANGUGAN Y SEVILLA, ALIAS “MONCHING” AND JOHN DOE, ACCUSED, DOMINGO SALAZAR...

G R. No. 99355. August 11, 1997

Ponente: PANGANIBAN, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-99355/>

PANGANIBAN, J.:

Although homicide (a crime against persons) is independently a graver offense than robbery (a crime against property), it is treated in the special complex crime of robbery with homicide as a mere incident committed by reason or on the occasion of the robbery. Unless the prosecution convincingly proves that the main purpose of the culprit(s) was the asportation of personal property and that the death was merely incidental to such asportation, there can be no conviction for this special complex crime.

Statement of the Case

This principle is stressed by the Court as it rules on this appeal from the Judgment[1] dated April 1, 1991 of the Regional Trial Court of Quezon City, Branch 104[2] which, acting as a special criminal court, convicted Appellants Domingo Salazar y Seroma alias “Inggo” and Monchito Gotangugan y Sevilla alias “Monching” of robbery with homicide.

In an Information dated July 31, 1989, Asst. Quezon City Prosecutor Perpetuo L.B. Alonzo accused Appellants Salazar and Gotangugan, together with one “John Doe,” of robbery with homicide committed as follows:[3]

That on or about the 10th day of March 1989, in Quezon City, Metro-Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring together, confederating with and mutually helping one another, did then and there, wilfully, unlawfully and feloniously, with intent to gain and by means of violence upon person, rob one CRISPIN GATMEN Y CEYNAS of his service firearm, a Squires Bingham Cal. 38 Revolver with Serial No. 1096012 valued at P6,000.00, Philippine Currency, to the damage and prejudice of the said offended party thereof in the aforementioned amount; and that by reason of or on the occasion of the said robbery, said accused with intent to kill and without any justifiable cause, did then and there, wilfully, unlawfully and feloniously attack, and assault the person of said CRISPIN GATMEN Y CEYNAS, by stabbing the latter, hitting him on the different parts of his body by the use of bladed weapon, thereby inflicting upon him serious and mortal wounds which were the direct and immediate cause of his untimely death, to the damage and prejudice of the heirs of said victim in such amount as may be awarded to them under the provisions of the Civil Code.”

Upon arraignment, appellants pleaded not guilty. After trial proceeded in due course, the court a quo rendered the assailed Judgment, the dispositive portion of which reads:[4]

WHEREFORE, judgment is hereby rendered, finding both accused, Domingo Salazar y Seroma and Monchito Gotangugan y Sevilla, guilty of the crime of Robbery with Homicide as charged in the information. They are

both sentenced to suffer the penalty of RECLUSION PERPETUA, to pay the heirs of the deceased damages in the amount of P30,000.00, plus the sum of P6,500.00 representing the value of the revolver taken by both accused, plus all the accessory penalties provided for by law, without subsidiary imprisonment in case of insolvency, and to pay the costs.”

The Facts Evidence for the Prosecution

The prosecution presented the following witnesses: Pfc. Jose Antonio of the Quezon City Police, Eyewitnesses Vicente Miranda, Jr. and Pedro Soriano, Dr. Dario L. Gajardo of the PC/INP Crime Laboratory and Ben Felipe Dangza, Consultant/Manager of PUMA Security Agency. The Solicitor General, on behalf of the People, summarized the facts as viewed by the prosecution:[5]

“On March 10, 1989, at or about 3:30 (a.m.), Vicente Miranda, Jr. and his friend Nestor Arriola were standing in the corner of Road 1 and Visayas Avenue, Quezon City, about 12 meters from Linda’s Supermarket (TSN, October 31, 1989, pp. 3 and 21). At about the same time, Pedro Soriano, who was himself waiting for a ride, was standing in front of the Kambingan Restaurant along Visayas Avenue and beside Linda’s Supermarket (TSN, November 6, 1989, p. 2-3). Moments later, they saw appellants Domingo Salazar and Monchito Gotangugan together with an unidentified companion approach the security guard of Linda’s Supermarket (TSN, October 31, 1989, pp. 3-4, 27).

Salazar, Gotangugan and their companion talked to the security guard, who was later identified as Crispin Gatmen. Thereafter, Miranda saw Salazar pull out a 9-10 inches long dagger from his pocket, and pass the same to Gotangugan (Ibid., pp. 5, 15, 22). Armed with the dagger, Gotangugan suddenly started stabbing Gatmen (Ibid., p. 5, 15, 16).

At that precise moment, Pedro Soriano, who was only about 10 to 15 meters from Linda’s Supermarket heard moans coming from the guardhouse in front of Linda’s Supermarket. He turned his head towards the place where the moans were coming from and saw Gatmen inside the guardhouse being repeatedly stabbed by Gotangugan (TSN, November 6, 1989, pp. 2-6, 15-16).

Both Miranda and Soriano were able to witness and identify the malefactors because the place where the incident happened was well-lighted (TSN, October 31, 1989, p. 22; November 6, 1989, pp. 4-5).

While Gotangugan was stabbing Gatmen, Salazar stood close to Gotangugan, while their unidentified companion acted as a lookout (TSN, October 31, 1989, pp. 8, 15; November 6, 1989, pp. 16).

Out of fear, Miranda and Arriola ran towards Tandang Sora. While running, however, they saw Salazar and Gotangugan get the revolver of Gatmen (TSN, October 31, 1989, p. 7-8). Soriano, on the other hand, left slowly but saw Salazar get the gun of Gatmen (TSN, November 6, 1989, p. 6-7).

After getting the gun, Salazar, Gotangugan, and their unidentified companion left the scene of the crime (TSN, October 31, 1989, p. 8; November 6, 1989, p. 7).

Gatmen died as a consequence of the following stab wounds, to wit:

- (1) Hacked wound, frontal extending to the right pre-auricular region, measuring 10 by 1 cm, 8 cm from the anterior midline, fracturing the frontal bone.
- (2) Stab wound, right zygomatic region, measuring 3 by 0.7 cm, 10 cm from the anterior midline, directed posteriorwards and medialwards, fracturing the right zygomatic bone.
- (3) Incised wound, chin, measuring 1.2 by 0.3 cm, 2 cm right of the anterior midline.
- (4) Stab wound, neck measuring 5 by 1.2 cm, crossing the anterior midline, 4 cm to the right and 1 cm to the posteriorwards and medialwards, lacerating the trachea, larynx and esophagus.

- (5) Stab wound, right clavicular region, measuring 8 by 2 cm, 7 cm from the anterior midline, 3 cm deep, directed posteriorwards and medialwards, fracturing the right clavicle.
- (6) Stab wound, interclavicular region, measuring 3 by 0.1 cm, 6 cm from the anterior midline.
- (7) Linear abrasion, left mammary region, measuring 3 by 0.1 cm, 6 cm from the anterior midline.
- (8) Lacerated wound, palmar aspect of the left hand, measuring 5 by 2 cm, 3 cm lateral to its anterior midline.
- (9) Lacerated wound, palmar aspect of the right hand, measuring 4 by 2 cm, along its anterior midline.
- (10) Lacerated wound, middle phalange of the left small finger, measuring 1 by 0.1 cm.
- (11) Stab wound, proximal phalange of the left index finger, measuring 2.2 by 1 cm.
- (12) Incised wound, middle phalange of the right middle finger, measuring 1 by 0.5 cm.'

(Exhibit "E")

Evidence for the Defense

Appellants, testifying for themselves, set up the defense of alibi. The court a quo summarized their testimonies as follows:[6]

"DOMINGO SALAZAR, 30 years old, and residing at c/o Bureau of Animal Industry, Visayas Avenue, Quezon City, testified that he had been in that place for ten (10) years and that during the early morning of July 27, 1989, he was at their house sleeping, when all of a sudden he was awakened because two persons kicked him and with guns pointed at him, he was ordered to stand up. The two persons searched his things inside the house and asked him where he hid his gun. Then, they dragged him out of his house. Outside the house, he was kicked, boxed and hit with the butt of the gun. There were about five (5) people who went to his house, all armed. He denied any participation in the killing of the deceased because according to him, he was at his house sleeping. He slept at 7:00 (p.m. on) March 9 and woke up at dawn, March 10. He was with his wife Juanita Salazar, and his father-in-law. They were sleeping side by side. He did not see Vicente Miranda and Pedro Soriano before he was arrested on July 27, 1989. However, he admitted having seen Miranda and Soriano at the police headquarters at Sikatuna, peeping at their cell. He often saw them at City Hall with policemen accompanying newly arrested persons.

MONCHITO GOTANGUGAN, 23 years old, married, vendor, and with residence at Visayas Avenue, Quezon City testified that he was not at the scene of the crime when the said incident took place and that on March 10, 1989, he was at Lucena City. On July 27, 1989, he was at the house of his sister located at Baex Compound, Visayas Avenue, Quezon City, arriving in that place during the first week of May 1989. In the morning of July 27, 1989, policemen forcibly entered his house and dragged him outside, ransacking his belongings and bringing him at Sikatuna Police Headquarters. He was accused of being a 'Sparrow', hold-upper and 'akyat bahay', and ordered to bring out firearms, but they did not find anything. They mauled him at Sikatuna headquarters. While still at their house, he was kicked and hit with the butt of the armalite. At the Sikatuna headquarters, he was never informed by the police that he participated in the killing of the security guard in front of Linda's Supermarket in the morning. He had never seen the witnesses presented by the prosecution, however, he saw them at the City hall together with policemen and other detainees."

Ruling of the Trial Court

The trial court brushed aside the alibi interposed by appellants, branding it as an inherently weak defense. It gave full credence to the accounts of the eyewitnesses for the prosecution as no evidence was adduced to refute them or to show why said eyewitnesses would testify falsely against appellants. Quite the contrary, the "prosecution

evidence (was) clear and convincing.” The bare allegation of the defense that they were “assets and informants” of the apprehending policemen was disbelieved. Thus, it rendered the aforementioned six-page Judgment of conviction.

Hence, this appeal direct to this Court, the penalty being *reclusión perpetua*.

Assignment of Errors

In their Brief,[7] appellants attack the prosecution evidence for its lack of probative value to outweigh their alibi and to sustain their conviction. They allege that the eyewitnesses’ testimonies suffer from material inconsistencies and contradictions that cast serious doubt on their credibility. Specifically, the following errors were imputed to the court a quo:[8]

“I

The lower court erred in giving full faith and credence to the testimonies of prosecution witnesses Vicente Miranda and Pedro Soriano since a more conscientious scrutiny of their testimonies will show that they are highly incredible and consistently contradicting and improbable.

II

The lower court erred in convicting both the accused-appellants since the evidence presented by the prosecution failed to prove beyond reasonable doubt the offense charged.

III

The lower court erred in refusing and failing to find that the herein accused-appellants were arrested without warrant and therefore all evidence obtained after such illegal arrest are inadmissible.

IV

The lower court committed serious error amounting to grave abuse of discretion in finding that the testimonies of the prosecution witnesses Vicente Miranda and Pedro Soriano were not refuted because the defense interposed by the accused is alibi.”

These alleged errors will be discussed by the Court under the general heading “Credibility of Witnesses and Sufficiency of Evidence.” In addition, the Court will tackle, *motu proprio*, the issue of whether appellants may be held liable for the special complex crime of robbery with homicide, in the light of the proven facts.

The Court’s Ruling

The Court finds appellants guilty of two separate felonies; namely, homicide and theft, but not of the special complex crime of robbery with homicide.

Credibility of Witnesses and Sufficiency of Evidence

As in most criminal cases, appellants contend that the court a quo erred in bestowing credence on the testimony of prosecution witnesses. Appellants assail the credibility of the eyewitnesses by pointing out several inconsistencies in their testimonies which render them “highly improbable and consistently impossible.”

Two Different Persons Produced the Dagger and Stabbed the Victim per Miranda’s Testimony

We disagree with appellants’ contention that, during the direct examination, Prosecution Witness Miranda wobbled particularly on who between the appellants stabbed the victim. The defense segregated Miranda’s testimony, quoting and highlighting separate portions thereof to show alleged inconsistencies. According to the

defense, Miranda was thus not credible as he was not clear as to who between the two appellants actually pulled out the dagger and stabbed the victim. But when questioned specifically on this point, the witness clarified the sequence of events from the act of pulling out the dagger to the actual stabbing. Said the witness:[9]

“Q. You said one of the three men pulled out a bladed instrument. Will you tell the Honorable Court how far were you from these three persons who were then in these conversation with the security guard?

A. From the witness stand up to that corner, sir.

FISCAL BELTRAN:

About a distance of 12 meters. I am proposing that the distance pointed to by the witness is about 12 meters.

xxx xxx xxx

FISCAL BELTRAN:

Q. You said that one of the three persons pulled out a bladed instrument. What did you do after pulling out this bladed instrument?

A. I saw him, sir, stab the guard.

Q. The same person who pulled out this bladed instrument was the same one who stabbed the security guard?

A. No, sir. He handed the bladed instrument to the other person, sir.

xxx xxx xxx

Q. Were you able to see the face of this person whom you said pulled out this bladed instrument?

A. Yes, sir.”

Nor are we persuaded by appellants’ contention that the witness’ sworn statement to the police shows that the one who pulled out the dagger was the same person who stabbed the victim. The pertinent portion of his statement reads:[10]

06.T–Anong kinalaman mo sa pangyayaring yon, kung mayroon?

S–Mangyari po, ay napadaan ho ako noon, kasama ko yong mga kaibigan ko, sa may harap ng Linda’s Grocery sa may kanto ng Road 1, at Visayas Avenue. Noong mga oras na yon (3:30AM) ay nakita ko na yong guardya na nakabantay doon sa may grocery ay parang may sinita na tatlong lalaki, tapos mamaya-maya, yong isang lalaki ay tinapik niya sa puwit yong kasama at bigla na lamang bumunot ng dagger at inundayan ng saksak yong guwardya, mga tatlong sunud-sunod, tapos atras ng atras naman yong gwardya hanggang napasandal doon sa may guard house at doon siya natumba tapos hinablot niya yong baril ng gwardya tapos nag-takbohan na sila patungo sa squatteros (sic) area sa may likoran ng Agriculture building, yong BAEX ho.

07.T–Bale ilan ka-tao ang sumaksak sa guardia, noong makita mo?

S–Yong isa lang na maliit, na medyo kalbo, at yong isa naman medyo pa-pilay-pilay ay siya tumapik sa kalbo na parang nag-uutos na saksakin yong guardya, yong isa naman ay doon sa may pinto ng Linda’s Grocery na tinitingnan naman niya yong kadamag (sic) ng pinto.”

While there may have been some vagueness in the answer to Question “06,” the clarification in the succeeding statement, i.e., the reply to Question “07,” sufficiently explains the witness’ story. It must be remembered that ex parte affidavits are generally considered incomplete and inaccurate and will not prevail over the witness’ statements on the stand.[11] That the defense labels Miranda’s answers as “inconsistencies” appears to this Court to be merely a strained interpretation of the witness’ testimony.

The Number of Stabs Inflicted Is a Minor Matter

Appellants make a mountain out of Miranda's admission on cross-examination that he was not sure how many times Gotangugan stabbed the victim vis-a-vis his earlier statement that one of appellants stabbed the victim thrice. There is really no inconsistency here. And even if we grant that there is, the alleged conflict pertains to an insignificant detail that is not material to the question of who killed the deceased. The general rule is that inconsistencies and contradictions in minor and trivial matters do not impair a witness' credibility.[12] The ambivalence of a witness on the exact number of stabs inflicted on the victim does not detract from the obvious fact that the victim was killed by Gotangugan, as clearly and positively testified to by Miranda. Indeed, in a startling event like a killing, it is difficult for a witness to keep tab of the exact number of strokes the killer made. It is enough that the witness gives a fair estimate. The important thing is that the stabbing took place, the victim died and the witness identified the culprit(s).

Distance Did Not Necessarily Hinder Perception

The contention that Miranda did not really see the culprits' faces deserves scant consideration. The distance of the witness from the stabbing incident was only 12 meters. That the crime happened before dawn (about 3:30 a.m.) is immaterial because the place was lighted.[13] The witness' remark that he was far from the situs of the crime merely meant that he was not near enough to hear the culprits' whispered conversation, but he was near enough to see their faces and their felonious deed.[14]

Appellants denigrate the witness' story that he ran closer to the locus criminis while witnessing the stabbing. They claim that the natural tendency would be to run farther away. However, under the circumstances, the witness did not really intend to come closer to the scene of the crime. What he did was to go to the area of Tandang Sora where there was a public market and where, expectably, there would be people even at such an early hour. The area towards the city hall, on the other hand, was unlit and deserted, as the government buildings there were still closed. Besides, since the witness was on his way to his house in Teachers' Village, he had to go to Tandang Sora, at that time, to get a ride. Hence, the witness' reaction was not unnatural. In fact, it was most prudent under the circumstances.

No Two Versions of the Event in Soriano's Testimony

The defense contends that the other eyewitness, Soriano, did not actually see the stabbing incident, much less the person who stabbed the victim. Appellants claim that Soriano presented two versions of the incident. According to one version given during direct examination, the witness allegedly stated that the security guard was seated outside the guardhouse and that one of the accused urinated behind him. Thereafter, the latter stabbed the victim.[15] In the other version given during cross-examination, the victim was allegedly inside the guardhouse when one of the culprits stabbed the victim.[16]

We disagree. The guardhouse was actually an outpost,[17] a structure open on all sides. The guard was sitting under its roof and his assailants were standing outside the roof. One of them was behind him and relieving himself. In this light, it is easy to understand the absence of discrepancy in the witness' testimony on this point.

Appellant Gotangugan Stabbed the Victim

Appellants claim that the witness was uncertain as to who actually stabbed the victim. While it is true that initially he made a mistake in pinpointing the culprits in the courtroom, this was the result only of his lack of familiarity with appellants' names. However, despite his initial confusion, his identification of the culprit who delivered the fatal stab wound was categorical. This is clearly shown in the transcripts of the trial:[18]

Q. Earlier, you pointed to two persons inside the courtroom as having participated in the stabbing of Crispin Gatmen, the first one gave his name as Monchito Gotangugan, will you tell the Honorable Court what was the

special participation of Monchito Gotangugan in the stabbing?

A. The gun was handed over to him.

COURT:

Gun?

A. Yes, Your Honor.

FISCAL BELTRAN:

Q. How about the other person, this Domingo Salazar, what did he do?

A. He was the one who stabbed the victim.

Q. Who stabbed the victim?

A. The bald one, sir.

INTERPRETER:

Witness pointing to a person by the name of Monchito Gotangugan.

ATTY. OSORIO:

Your Honor, may I reiterate the witness to speak louder.

FISCAL BELTRAN:

Q Alright. You pointed to Monchito Gotangugan as the one who stabbed Crispin Gatmen. How about the other person you pointed to, what did he do?

A. After the bald one stabbed the victim, sir, the big one took the gun from the security guard.”

Indeed, the foregoing testimony demonstrates that while the witness was confused as to the name of the culprit, he was certain about his identity.

Eyewitnesses' Accounts Are Consistent with Each Other

The defense claims that the testimonies of the two eyewitnesses materially contradicted each other in two ways. First, Miranda allegedly said that the security guard was standing when he was stabbed while Soriano stated that he was sitting down. Second, Miranda testified that one of the culprits produced the dagger and the other stabbed the victim with it. Soriano, on the other hand, said that only one person produced the dagger and thereafter stabbed the victim.

We have examined the Appellants' Brief and the records of this case and we have found no factual basis for the strained inferences of the defense. From Miranda's sworn statement, the defense deduced that the security guard was standing outside the outpost. But this deduction is not supported by said sworn statement or by the witness' testimony in court. Miranda never said that the victim was standing up or was outside the guardhouse when he was stabbed.

Both witnesses agreed that the person who stabbed the victim was Gotangugan. Both eyewitnesses corroborated each other in identifying Salazar as the one who drew the dagger from his jacket and then handed it to Gotangugan. With the dagger, Gotangugan stabbed the security guard. The insistence of the defense on this supposed “contradiction” simply has no basis.

Time and again, this Court has ruled that the assessment of the trial court on the credibility of witnesses and their stories is well-nigh conclusive on appeal, provided it is not tainted with arbitrariness or oversight of some fact or

circumstance of weight and influence.[19] In this case, the defense has tried but failed to establish any material inconsistency or contradiction which would justify a departure from this rule.

Compared with the evidence submitted by the prosecution, appellants' denial and alibi cannot possibly be given more probative weight than the clear and positive identification provided by no less than two credible eyewitnesses.[20]

Granting *arguendo* that appellants were illegally arrested, such arrest did not invest these eyewitness accounts with constitutional infirmity as "fruits of the poisonous tree." Considering that their conviction could be secured on the strength of the testimonial evidence given in open court which are not inadmissible in evidence, the court finds no reason to further belabor the matter.

Elements of Robo con Homicidio

In prosecuting robbery with homicide cases, the government needs to prove the following elements: (1) the taking of personal property is committed with violence or intimidation against persons; (2) the property taken belongs to another; (3) the taking is done with *animus lucrandi*; and (4) by reason of the robbery or on the occasion thereof, homicide (used in its generic sense) is committed.[21]

In this case, the prosecution has convincingly proven that (1) appellants asported a gun with violence and intimidation against the victim; (2) the gun belonged to the deceased; and (3) the security guard was killed. *Animus lucrandi* is presumed when there is proof of asportation.[22] All of these facts are supported by the testimonies of competent eyewitnesses presented by the prosecution.

There is, however, no showing that the death of the security guard occurred merely by reason or on the occasion of the robbery. The prosecution was silent on appellants' primary criminal intent. Did they intend to kill the security guard in order to steal the gun? Or did they intend only to kill him, the taking of the gun being merely an afterthought? The prosecution did not prove either of the two propositions, and the court *a quo* failed to elaborate on this point. Thus, we cannot affirm appellants' conviction of the crime charged in the Information.

In several cases, the Court has already ruled that a conviction for robbery with homicide requires certitude that the robbery was the main purpose and objective of the criminals and that the killing was merely incidental, resulting merely by reason or on the occasion of the robbery.[23] Article 294 of the Revised Penal Code specifically states:

"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 or *reclusión perpetua* to death, when by reason or on occasion of the robbery, the crime of homicide shall have been committed, x x x." (Underscoring supplied)

The Spanish version of Article 294 (1) of the Revised Penal Code reads: "1.0--Con la pena de *reclusion perpetua* a muerte, cuando con motivo o con ocasion del robo resultare homicidio." Chief Justice Ramon C. Aquino explains that the use of the words "con motivo...del robo" permits of no interpretation other than that the intent of the actor must supply the connection between the homicide and the robbery in order to constitute the complex offense. If that intent comprehends the robbery, it is immaterial that the homicide may in point of time immediately precede instead of follow the robbery. Where the original design comprehends robbery, and homicide is perpetrated by reason or on the occasion of the consummation of the former, the crime committed is the special complex offense, even if homicide precedes the robbery by an appreciable interval of time. On the other hand, if the original criminal design does not clearly comprehend robbery, but robbery follows the homicide as an afterthought or as a minor incident of the homicide, the criminal acts should be viewed as constitutive of two offenses and not of a single complex offense. Robbery with homicide arises only when there is a direct

relation, an intimate connection, between the robbery and the killing, even if the killing is prior to, concurrent with, or subsequent to the robbery.[24]

On the other hand, robbery with homicide under Article 294 of the Code is distinguished from the complex crime punished in Article 48, which contemplates a situation where one offense is a necessary means to commit the other or where a single act results in two or more offenses. The homicide in Article 294(1) is not necessary for the accomplishment of the robbery.[25] However, it could be committed to avoid future identification of the robbers or as a consequence or incident thereof.

Robo con homicidio is an indivisible offense, a special complex crime. The penalty for robbery with homicide is more severe because the law sees, in this crime, that men placed lucre above the value of human life, thus, justifying the imposition of a more severe penalty than that for simple homicide or robbery. In view of said graver penalty, jurisprudence exacts a stricter requirement before convicting the accused of this crime. Where the homicide is not conclusively shown to have been committed for the purpose of robbing the victim, or where the robbery was not proven, there can be no conviction for robo con homicidio.[26]

In the case under consideration, appellants' primary intent remains an enigma. For this reason, we cannot affirm appellants' conviction for robbery with homicide. The fact that appellants took the firearm after shooting the security guard did not prove that their primary intent was to commit robbery. It shows that they committed an unlawful taking of property, but it does not exclude the possibility that this was merely an afterthought. Any conclusion as to their primary criminal intent based on the proven facts is speculative and without adequate basis.

In view of the facts established and consistent with jurisprudence, the Court can convict appellants only of the separate offenses of theft and homicide, which were both duly proven. This Court is cognizant of the fact that the Information accused appellants of the crime of "robbery with homicide." Nonetheless, it is axiomatic that the nature and character of the crime charged are determined not by the designation of the specific crime but by the facts alleged in the Information. Thus, in *People vs. Ponciano*,[27] the Court through Mr. Justice Hugo E. Gutierrez, Jr. held:

"x x x In the case at bar, the direct relation or intimate connection between the robbery and the killing was not established.

We therefore, follow the rule laid down in *People v. Manalang* [170 SCRA 149,163, February 9,1989],[28] to wit:

'We already had several occasions to hold that if the original design was not to commit robbery but that the idea of taking the personal property of another with intent to gain came to the mind of the offender after the homicide only as an afterthought or as a minor incident in the homicide, the criminal acts should be viewed as constituting two distinct offenses and not as a single complex crime; the crimes would be either homicide or murder, as the case may be, and theft. (*People v. Atanacio, et al.*, No. L-11844, November 29, 1960, 110 Phil. 1032; *People v. Elizaga*, 86 Phil. 364 [1950]; *People v. Glore*, 87 Phil. 739 [1950])' "(Underscoring supplied)

Thus, appellants should be held guilty of homicide under Article 249 of the Revised Penal Code and theft under Article 309 of the same Code. We also hold that treachery aggravated the killing. The attack was sudden and without warning, affording the security guard no chance to defend himself.[29] As it was not alleged in the Information, it cannot be used to qualify the killing to murder. However, treachery can still be considered as a generic aggravating circumstance.[30]

While it was proven during the trial that the stolen pistol was worth P6,500.00,[31] the Information placed the value at P6,000.00 only. However, the appellant did not object to the higher valuation and is thus deemed to have waived his right to avail of the lower penalty under paragraph 3 of Article 309 of the Revised Penal Code.

Consequently, appellants may be penalized for theft under Article 309 (2) of the said Code.[32]

It is scarcely necessary to point out that there was conspiracy between appellants, because they clearly acted in concert and with a unified criminal design.[33] The eyewitness accounts tell us that one of the assailants touched the other appellant's behind to signal the start of the attack against the security guard. Salazar then pulled out the dagger which Gotangugan used to stab the victim.

WHEREFORE, the assailed Judgment is hereby MODIFIED as follows:

(1) Appellants are hereby found GUILTY of the separate offense of homicide and SENTENCED to the indeterminate sentence of ten years and one day of prisión mayor, as minimum, to seventeen years, four months and one day of reclusión temporal, as maximum.

(2) The indemnity ex delicto imposed by the trial court is INCREASED to fifty thousand pesos (P50,000.00) in line with prevailing jurisprudence.[34]

(3) Appellants are found also GUILTY of the separate offense of theft in accordance with Article 309 (2) of the Revised Penal Code and SENTENCED to the indeterminate penalty of six months and one day of prisión correccional, as minimum, to four years and two months and one day also of prisión correccional, as maximum.

(4) Costs against appellants.

SO ORDERED.

Narvasa, C.J., (Chairman), Davide, Jr., Melo, and Francisco, JJ., concur.

[1] Rollo, p. 19.

[2] Presided by then Judge (now Justice of the Court of Appeals) Maximiano C. Asuncion.

[3] Rollo, p. 3.

[4] Rollo, p. 24.

[5] Rollo, pp. 90-94.

[6] Rollo, pp. 22-23.

[7] Appellants' 38-page Brief was signed by Counsel de parte Ramiro S. Osorio.

[8] Rollo, pp. 36-37.

[9] TSN, October 31, 1989, pp. 3-5.

[10] Exh. "B," loose sheets of paper with the records.

[11] *People vs. Avanzado*, 158 SCRA 427, 433, February 29, 1988; *People vs. Alcantara*, 151 SCRA 327, 330, June 30, 1987; *People vs. Pacala*, 58 SCRA 370, 379, August 15, 1974; and *People vs. Jacobo*, G.R. No. 107699, March 21, 1997, pp. 15-17.

[12] *People vs. Pat*, G.R. No. 95353-54, March 7, 1996, p. 20; *People vs. Galanza*, 227 SCRA 526, 532, November 8, 1993; *People vs. Panganiban*, 241 SCRA 91, 99-100, February 6, 1995.

[13] TSN, October 31, 1989, p. 22.

[14] *Ibid.*, p. 5.

[15] TSN, November 6, 1989, p. 5.

[16] *Id.*, p. 15-17.

[17] *Id.*, p. 4.

[18] *Id.*, p. 6.

[19] *People vs. Garraez*, G.R. Nos. 106083-84, March 29, 1996, p. 10; *People vs. Pat*, G.R. Nos. 95353-54, March 7, 1996, p. 19; *People vs. Rubio*, G.R. No. 118315, June 20, 1996, p. 4; *People vs. Galanza*, 227 SCRA 526, 531, November 8, 1993; *People vs. Alay-ay*, 224 SCRA 62, 69, June 30, 1993; *People vs. Datingginoo*, 223 SCRA 331, 334, June 14, 1993; and *People vs. Amania*, 220 SCRA 347, 354, March 23, 1993.

[20] *People vs. Galanza*, *Ibid.*, pp. 532-533; *People vs. Nimo*, 227 SCRA 69, 83, October 5, 1993; and *People vs. Barlis*, 231 SCRA 426, 438-439, March 24, 1994.

[21] *People vs. Cabiles*, 248 SCRA 207, 219, September 14, 1995.

[22] *People vs. Cabiles*, *supra*.

[23] *People vs. Lamsing*, 248 SCRA 471, 479, September 21, 1995; *People vs. Eroles*, 226 SCRA 554, 558, September 17, 1993; and *People vs. Amania*, 220 SCRA 347, 356-357, March 23, 1993.

[24] Aquino, *The Revised Penal Code*, Vol. III, 1988 ed., pp. 113-117.

[25] *People vs. Sinoc*, G.R. Nos. 113511-12, p. 10.

[26] *U.S. vs. Baguiao*, 4 Phil. 110, 112, January 4, 1905.

[27] 204 SCRA 627, 639-640, December 5, 1991.

[28] Per Sarmiento, J.

[29] *Ibid.*, p. 17; *id.*, pp. 19-20.

[30] *People vs. Raquinio*, 17 SCRA 914, 919, August 12, 1966; *People vs. Guba*, 42 SCRA 109, 117-118, October 29, 1971; *People vs. Lacao*, 60 SCRA 89, 95-96, September 30, 1974.

[31] TSN, January 31, 1990, p.8.

[32] "ART. 309. Penalties. Any person guilty of theft shall be punished by:

x x x

(2) The penalty of prision correccional in its medium and maximum periods, if the value of the thing stolen is more than 6,000 pesos but does not exceed 12,000 pesos.

(3) The penalty of prision correccional in its minimum and medium periods, if the value of the property stolen is more than 200 pesos but does not exceed 6,000 pesos."

[33] *People vs. Azugue*, G.R. No. 110098, February 26, 1997, pp. 16-17; *People vs. Layno*, G.R. No. 110833, November 21, 1996, pp. 17-19; and *People vs. Isleta*, G.R. No. 114971, November 19, 1996, pp. 11-12.

[34] *People vs. Abalos*, 258 SCRA 523, 534, July 9, 1996; *People vs. Porras*, 255 SCRA 514, 531, March 29, 1996; *People vs. Panlilio*, 255 SCRA 497, 503, March 29, 1996.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.