PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ALFREDO CABILTO Y PACAYRA AND ALFREDO MONTAJES Y MALINAO, ACCUSED-APPELLANTS.

G.R. Nos. 128816 & 139979-80. August 08, 2001

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

This is an appeal from the Decision[1] of the Regional Trial Court of Valenzuela, Branch 27, convicting accused-appellants of the crime of robbery with homicide and sentencing them to suffer the penalty of reclusion perpetua.

Accused-appellants were charged with violation of Presidential Decree No. 532 (Highway Robbery) with homicide, violation of Presidential Decree No. 1866 (Illegal Possession of Firearms and Ammunitions) and attempted homicide in Criminal Case Nos. 4179-V-94, 4180-V-94, and 4181-V-94, respectively, under the following Informations:

> Criminal Case No. 4179-V-94:
>
> That on or about April 2, 1994 in Valenzuela, Metro Manila and within the jurisdiction of this Honorable Court, the above-named accused, conspiring together and mutually helping one another, with intent of (sic) gain and by means of force and intimidation, did then and there wilfully, unlawfully and feloniously take, rob and carry away with them a Nikon wrist watch worth P550.00 and a wallet with P900.00 cash belonging to one MANOLITO C. PARAISO, a wedding ring, a gold ring and wallet with P700.00 cash and other items totaling to P2,700.00 which belong to one RAMON R. ESPIRITU, a Seiko 5 wrist watch, a ring and cash money of P100.00 belonging to one RODOLFO DELA CRUZ, a brown bag with electrical devices and cash money of P30.00 totaling to P500.00 which belonged to RICKY DELA CRUZ, an automatic Seiko watch worth P2,200.00 which belongs to one LEONCIO A. GONZALES, while said complainants were on board a passenger jeepney then traveling along Maysan Road, this municipality, a public highway, to the damage and prejudice of the said complainants in an undetermined value; and on the occasion of said robbery in pursuance of their conspiracy, said accused, without any justifiable cause and with deliberate intent to kill, did then and there wilfully, unlawfully and feloniously shoot one JAIME DUMAGO y BALULONG thereby inflicting upon the latter serious physical injuries which caused his death.
>
> Contrary to law.[2]
>
> Criminal Case No. 4180-V-94:
>
> That on or about April 2, 1994 in Valenzuela, Metro Manila and within the jurisdiction of this Honorable Court, the abovenamed accused, without any authority of law, did then and there wilfully, unlawfully and feloniously have in his possession and control one (1) .38 caliber revolver, three (3) spent shells of .38 caliber revolver and three (3) live ammunitions of .38 caliber revolver, without any purpose and intent of surrendering the same to the proper authority.

Contrary to law.[3]

Criminal Case No. 4181-V-94:

That on or about 2nd day of April, 1994 in Valenzuela, Metro Manila and within the jurisdiction of this Honorable Court, the above-named accused, conspiring together and mutually helping one another, without any justifiable cause and with deliberate intent to kill, did then and there wilfully, unlawfully and feloniously shoot one SPO1 LEANDRO SANTOS, but missed, thus commencing directly by overt acts the commission of the crime of Homicide but which nevertheless did not perform all the acts of execution which would have produced the said felony as a consequence, by reason or causes other than his own spontaneous desistance, that is, due to the poor shooting ability of the accused.

Contrary to Law.[4]

Upon arraignment on April 20, 1994, accused-appellants pleaded not guilty.[5] Thereafter, trial ensued.

The prosecution's version of the incident is as follows:

On the night of April 2, 1994, Manolito Paraiso, Fire Officer Ramon Espiritu and Ricky dela Cruz, together with others were on board a passenger jeepney en route to Malinta, Valenzuela. At around 7:15 of the same evening, while the passenger jeepney was cruising along Maysan Road in Valenzuela, accused-appellants Cabilto and Montajes, and their unidentified cohort, drew out their .38 caliber pistol and announced a "hold up." Accused-appellants ordered the driver to continue driving and thereupon divested the passengers of their personal belongings.[6]

Taken from Manolito Paraiso was a wrist watch worth P500.00 and cash amounting to P900.00. Ramon Espiritu, on the other hand, lost two rings worth P2,000.00, his company identification card, driver's license, P700.00 cash and a wallet worth P180.00. Ricky dela Cruz, who had no money, was forced to give up his bag containing electronics tools, such as pliers, testers, and tape meters, with a total value of P400.00.[7]

Accused-appellants and their companion alighted along Fatima College. Thereafter, the victims proceeded to a nearby police station and reported the incident. Thus, accompanied by the robbery victims, particularly by dela Cruz and Espiritu, the members of the Valenzuela police, together with SPO1 Leandro Santos and SPO1 Angeles Miranda, went to the Family Compound where accused-appellants were seen to have escaped.[8]

The police officers found accused-appellants as they were about to leave a store. When SPO1 Santos introduced himself to the group, accused-appellant Cabilto shot him but missed. In the ensuing chase, Cabilto shot to death Jaime Dumago who happened to block his way. The chase ended with the apprehension of accused-appellants Cabilto and Montajes by SPO1 Santos and SPO1 Miranda, respectively. The male companion of accused-appellants, however, was able to escape.[9]

At the police station, accused-appellants were positively identified by their victims. Recovered from accused-appellant Cabilto was a .38 caliber revolver with three live bullets and three spent shells and a Seiko 5 wrist watch. From accused-appellant Montajes, the police officers were able to recover a bag containing a screw driver, a wrench and an identification card.[10]

Accused-appellants on the other hand, denied that they know each other. According to accused-appellant Montajes, he could not have committed the crime because at around 7:15 in the evening of April 2, 1994, he was in the house of his cousin, Arlinda Cabrilla, at Karuhatan, Valenzuela.[11] For his part, Cabilto testified that at around 7:25 in the evening of April 2, 1994, he was at the Land Transportation Office in Karuhatan, Valenzuela, on the way to the house of his cousin, Eddie Paquera. He claimed that he was not able to reach the house of his cousin because he was apprehended by the police, and forced to admit authorship of the robbery.[12]

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On July 10, 1996, the trial court rendered judgment, the dispositive portion of which reads:

> WHEREFORE, judgment is hereby rendered as follows:
>
> 1. In Crim. Case No. 4179-V-94, the Court finds accused ALFREDO CABILTO y PACAYRA and ALFREDO MONTAJES y MALINAO guilty beyond reasonable doubt and as principal of the crime of Robbery with Homicide as defined and penalized in Article 294(1) of the Revised Penal Code, without any attending mitigating or aggravating circumstance and thereby sentences each of said accused to suffer a penalty of reclusion perpetua and its accessory penalties. Further, accused Alfredo Cabilto y Pacayra and Alfredo Montajes are sentenced, jointly and severally, to pay the heirs of deceased Jaime Dumago y Balolong the amount of P50,000.00 as indemnity for the death of said deceased; the amount of P75,000.00 as indemnity for the loss of earning capacity of the same deceased, the amount of P50,000.00 as moral damages, and the amount of P30,000.00 as exemplary damages, without subsidiary imprisonment in case of insolvency. Finally, both accused are sentenced to pay the costs of suit.
>
> 2. In Crim. Case No. 4180-V-94, the accused ALFREDO CABILTO y PACAYRA is hereby acquitted of the crime charged, his guilt not having been proven beyond reasonable doubt. With costs de officio.
>
> 3. In Crim. Case No. 4181-V-94, the accused ALFREDO CABILTO y PACAYRA and ALFREDO MONTAJES y MALINAO are likewise acquitted considering that the crime charged is already absorbed in the crime of Robbery with Homicide filed against them in Crim. Case No. 4179-V-94. With costs de officio.
>
> The accused being a (sic) detention prisoners, they shall be credited the preventive imprisonment they have undergone in the service of their sentence.
>
> SO ORDERED.[13]

In this appeal, accused-appellants raise the lone assignment of error that:

> THE LOWER COURT ERRED IN CONVICTING THE ACCUSED-APPELLANTS OF THE CRIME OF ROBBERY WITH HOMICIDE AS CHARGED DESPITE FAILURE OF THE PROSECUTION TO PROVE THEIR GUILT BEYOND REASONABLE DOUBT.[14]

After a careful and exhaustive review of the records, we find that accused-appellants are guilty beyond reasonable doubt of the crime of robbery with homicide. No less than three witnesses positively identified accused-appellants Cabilto and Montajes as the persons who, at gun point, divested them of their personal belongings. Such unwavering identification of accused-appellants at the police station immediately after they were arrested through the aid of the victims, who accompanied the police officers in the ensuing chase, convinces us that accused-appellants are indeed guilty. Moreover, the trial court which had the unique opportunity to observe at first hand the demeanor of these witnesses and assess whether they are telling the truth or not, gave full faith and credence to their testimonies. Finding no facts and circumstances of weight and substance that would otherwise warrant a different conclusion, the Court accords the highest respect to the court a quo's evaluation of the credibility of these witnesses,[15] against whom no evidence of improper motive to testify in favor of the prosecution was shown by the defense.

The Court finds untenable the claim of accused-appellants that SPO1 Leandro Santos did not personally see who shot Jaime Dumagon. As categorically declared by SPO1 Santos, it was accused-appellant Cabilto who fired the gun.[16] As aptly explained by the trial court, although the killing of the deceased was perpetrated after the commission of the robbery, and in the process of escaping from the authorities, the same is regarded as integrated with robbery having been committed "by reason or on occasion" thereof. What is essential is that there is a nexus, an intimate connection between the robbery and the killing whether the latter be prior or subsequent to the former or whether both crimes were committed at the same time.[17]

Likewise unavailing is the contention of accused-appellants that the prosecution failed to prove conspiracy. In conspiracy, proof of an actual planning of the perpetration of the crime is not a condition precedent. It may be deduced from the mode and manner in which the offense was committed or inferred from the acts of the accused evincing a joint or common purpose and design, concerted action and community of interest.[18] In the case at bar, conspiracy was clearly manifested in the concerted efforts of the malefactors. Accused-appellants and their cohort simultaneously pulled out their guns and announced a hold-up. After divesting their victims of their personal belongings, they fled on foot at the same time and toward the same direction. Apparent then was the unity of their purpose to threaten their victims, render them defenseless and thereafter rob them of their personal effects.

Conspiracy having been proven, the precise degree of culpability of each of the accused-appellants in the instant case is of no moment. The act of one may be imputed to all conspirators. Consequently, even if accused-appellant Montajes did not participate in the killing of the deceased, he should equally be held accountable for the latter's death because there was no showing that he made an effort to prevent the same. The consistent doctrinal rule is that, when a homicide takes place by reason or on occasion of the robbery, all those who took part in the robbery shall be guilty of the special complex crime of robbery with homicide whether or not they actually participated in the killing, unless there is proof that they have endeavored to prevent the killing.[19]

On the face of their positive identification, accused-appellants' defense of denial and alibi cannot prevail.[20] To reiterate, not only were accused-appellants pinpointed by prosecution witness Ricky de la Cruz in the ensuing arrest immediately after the incident, they were likewise positively identified by their victims at the police station and in open court. Moreover, for their alibi to prosper, it is not enough for them to prove that they were somewhere else when the robbery with homicide at bar was committed. They must likewise demonstrate that they were so far away that they could not have been present at the locus criminis at the time of its commission.[21] Considering that at around 7:00 to 7:25 in the evening of April 4, 1994, the accused-appellants were in Karuhatan, Valenzuela, which is in the immediate vicinity where the robbers were seen to have escaped, their defense of alibi must fail.

The trial court correctly convicted accused-appellants of the crime of robbery with homicide and not for violation of Presidential Decree No. 532 (Highway Robbery) with homicide as charged in the information. It is noteworthy that the elements of robbery with homicide are clearly alleged in the information notwithstanding the erroneous caption. In People v. Versoza,[22] the Court held that a conviction for highway robbery requires proof that several accused were organized for the purpose of committing highway robbery indiscriminately. Certainly, there was no such proof in the present case. Neither is there proof that accused-appellants previously attempted to commit similar robberies to show the "indiscriminate" perpetration thereof. Hence, their conviction for robbery with homicide should be affirmed.

The acquittal of accused-appellants in Criminal Case No. 4181-V-94, for attempted homicide is likewise in order. The attempt to take the life of SPO1 Leandro Santos is absorbed in the crime of robbery with homicide which is a special complex crime that remains fundamentally the same regardless of the number of homicides or injuries committed in connection with the robbery.[23]

Then, too, the court a quo correctly acquitted accused-appellant Cabilto of the charge of illegal possession of firearms in Criminal Case No. 4180-V-94, for failure of the prosecution to prove that accused-appellant did not have the necessary permit to possess and carry a firearm. At any rate, even if a judgment of conviction for illegal possession was meted out on accused-appellant, such conviction cannot stand in view of the enactment of Republic Act No. 8294, which amended certain provisions of Presidential Decree No. 1866. Under said act, if an unlicensed firearm is used in the perpetration of any crime, there can be no separate offense of illegal possession

of firearms.[24]

Article 294, paragraph 1, of the Revised Penal Code imposes the penalty of reclusion perpetua to death for the crime of robbery with homicide. There being neither aggravating nor mitigating circumstance attendant in the case at bar, the lesser penalty of reclusion perpetua should be imposed on accused-appellants.[25]

The trial court's award of moral and exemplary damages, however, cannot be sustained. Moral damages are recoverable for the mental anguish and emotional distress suffered by the heirs of the victim. Exemplary damages, on the other hand, are awarded to provide an example or correction for the public good.[26] Considering that the prosecution failed to substantiate the claim for moral damages, the Court is constrained to set aside this award. The same goes for exemplary damages there being no aggravating circumstance to warrant the award thereof.

As shown by the records, the deceased was a 42-year old welder, earning P250.00 daily at the time of his death.[27] Based on the foregoing, the award of loss of earning capacity of the deceased should be computed using the following formula:[28]

Net

= Life expectancy

Gross annual

Living expenses

Earning

[2/3 (80-age at death)]

income (GAI)

(50% of GAI)

Capacity

[250 (daily wage) x
261(No. of working days in a yr.)]

= 2/3 [(80-42)] X 65, 250.00 -32,625.00

= 2/3 (38) X 65, 250.00 - 32, 625.00

= 25.33 X 32,625.00

= 82,639.13

Thus, the P75,000.00 award of the trial court for loss of earning capacity should be increased to P82,639.13.

Finally, the trial court failed to decree the necessary restitution or reparation of the personal belongings taken by accused-appellants. Hence, accused-appellants are ordered to return the following items, or, if not feasible, the value thereof to their owners, thus:

Manolito Paraiso

-

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1 wrist watch worth P500.00 and cash of P900.00.

Ramon Espiritu

-

2 pieces of ring worth P2,000.00 company I.D., driver's license, wallet worth P180.00 & cash of P700.00.

Ricky de la Cruz

-

Electronics tools & equipment, such as pliers, testers, and tape meter, with a total value of P400.00.

WHEREFORE, based on the foregoing, the decision of the Regional Trial Court of Valenzuela, finding accused-appellants Alfredo Cabilto y Pacayra and Alfredo Montajes y Malinao, guilty beyond reasonable doubt of the crime of Robbery with Homicide, and sentencing them to suffer the penalty of reclusion perpetua is AFFIRMED with the MODIFICATIONS that the P50,000.00 moral and exemplary damages awarded by the trial court are hereby deleted; and that in addition to the P50,000.00 death indemnity to the heirs of Jaime Dumago, accused-appellants should pay the heirs of the deceased the amount of P82,639.13, as indemnity for loss of earning capacity. Accused-appellants are further ordered to make the necessary restitution or reparation, as the case may be, of the stolen personal properties. Costs de oficio.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Puno, Kapunan, and Pardo, JJ., concur.

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[1] Penned by Judge Floro P. Alejo.

[2] Rollo, p. 6.

[3] Rollo, p. 9.

[4] Rollo, p. 10.

[5] Records, p. 32.

[6] TSN, May 15, 1995, pp. 3-5; July 3, 1995, pp. 5-7.

[7] TSN, November 23, 1994, pp. 13-14; May 15, 1995, pp. 5-6; July 3, 1998, p. 9.

[8] TSN, May 15, 1995, p. 6; July 3, 1998, p. 7.

[9] TSN, August 26, 1994, pp. 6-10.

[10] TSN, August 9, 1995, pp. 4-5; August 26, 1994, p. 10.

[11] TSN, January 3, 1996, p. 2-4.

[12] TSN, January 12, 1996, pp. 2-3.

[13] Rollo, pp. 31-32.

[14] Rollo, p. 65.

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[15] People v. Obello, 284 SCRA 79; 88-89 [1998]; citing People v. Atuel, 261 SCRA 339 [1996]; People v. Sabellina, 238 SCRA 492 [1994]; People v. Eduardo dela Cruz, 229 SCRA 754 [1994]; People v. Hubilla, Jr., 252 SCRA 471 [1996]; People v. Francisco, 213 SCRA 746 [1992]; People v. Ramos, 222 SCRA 557 [1993]; People v. Lucas, 232 SCRA 537 [1994] and People v. Comia, 236 SCRA 185 [1994].

[16] TSN, August 26, 1994, pp. 7-9; May 3, 1995, pp. 1-2.

[17] People v. Nang, 289 SCRA 16, 33 [1998]; citing People v. Hernandez, 46 Phil. 48 [1924].

[18] People v. Andales, 312 SCRA 738, 749 [1999]; citing People v. Botona, 304 SCRA 712 [1999].

[19] People v. Magdamit, 279 SCRA 423, 433 [1997]; citing People v. Degoma, 209 SCRA 266 [1992]; People v. Escosio, et al., 220 SCRA 475 [1993]; and People v. Yabut, 226 SCRA 715 [1993].

[20] People v. Molina, 311 SCRA 517, 527 [1999].

[21] People v. Carullo, 289 SCRA 481, 496 [1998]; citing People v. Pija, 245 SCRA 80 [1995].

[22] 294 SCRA 466, 484 [1998]; citing People v. Mendoza, 234 Phil. 273, 292 [1996].

[23] People v. Pedroso, 115 SCRA 599, 608-609 [1982].

[24] People v. Ladjaalam, G.R. No. 136149-51, September 19, 2000.

[25] Revised Penal Code, Article 63, paragraph 2.

[26] People v. Langres, 316 SCRA 769, 788 [1999].

[27] Records, Exhibit O, p. 12; TSN, June 6, 1994, p. 5.

[28] People v. Enguito, 326 SCRA 508, 529 [2000]; People v. Langit, G.R. Nos. 134757-58 August 4, 2000.

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