PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. SHERJOHN ARONDAIN AND JOSE PRECIOSO, ACCUSED.

G.R. Nos. 131864-65. September 27, 2001

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

Robo con homicido is a special complex crime against property. Absent clear and convincing evidence that the crime of robbery was perpetrated, and that, on occasion or by reason thereof, a homicide was committed, an accused cannot be found guilty of robbery with homicide, but only homicide, or murder, as the case may be.

Before us on automatic review is the Joint Decision[1] of the Regional Trial Court of Iloilo City, Branch 25, convicting and sentencing accused Sherjohn Arondain to death in Criminal Case No. 47067 for Qualified Illegal Possession of Firearm; and convicting accused Sherjohn Arondain and Jose Precioso of Frustrated Robbery with Homicide and sentencing them to suffer the penalty of reclusion perpetua.

At around 8:00 o'clock in the evening of October 3, 1996, police officers Buenojildo Loja, Fidel Mosquito, Marcelino Melendes[2] and Roberto Catubuan responded to a report of a hold-up incident near the Florete Compound, along Q. Abeto Street, Mandurriao, Iloilo City. The police officers found many people at the scene milling around a Chin-chin taxicab with its lights still on.[3]

Officer Melendes inspected the taxicab and found its driver, Teodorico Parreño, Jr., dead in the driver's seat. His foot was still on the accelerator, while his body was dangling on the open door of the cab, and his head was on the ground. Scattered on the floor of the cab and on the ground beneath the open door were money bills of different denominations totaling P1,040.00. The deceased's wallet containing a small amount of money was found beside him.[4]

Meanwhile, Officers Loja, Mosquito, and Catubuan were informed by John Gallo, a security guard of the Florete Compound, that after he heard a gunshot, he saw two male persons come out of the Chin-chin taxicab and run toward the field at the back of the Florete Compound. One of them came from the backseat of the taxicab while the other from the front seat, carrying a gun. They were later identified as Jose Precioso and accused-appellant Sherjohn Arondain.[5]

Acting on the lead, the police officers requested the security guard of the compound to illuminate the field. As soon as the search light was turned on, the policemen saw accused-appellant holding a gun. Officer Mosquito fired a warning shot and approached accused-appellant. He asked him where his companion was, and he pointed to Jose Precioso who was lying on his belly about 8 to 10 meters away. Found in accused-appellant's possession was a .38 caliber revolver without serial number, with 2 live bullets and an empty shell, which the policemen confiscated.[6]

The police officers asked why they shot the victim, and accused-appellant answered that he shot the victim because the latter resisted his demand for money. He added that after shooting the driver, he panicked and

immediately scampered away, leaving the money bills scattered on the floor of the taxicab.[7]

Dr. Tito Dormal, medico-legal officer of the PNP, Iloilo, conducted the autopsy on the deceased, Teodorico Parreño, Jr. He testified that the entrance wound was located above the right armpit. The bullet entered the chest cavity, perforated the right lung, and traveled thru the middle lobe of the left lung, where the slug was recovered. He inspected the slug and opined that the same must have been fired from a .38 caliber revolver.[8]

SPO3 Ely Superio, of the Firearms and Explosive Unit of Region VI, testified that accused-appellant did not appear on the record as one of those licensed to possess and carry firearms.[9]

The two accused, eighteen year-old Sherjohn Arondain and twenty-seven year-old Jose Precioso, interposed self-defense. Arondain testified that on the night of October 3, 1996, he and Jose Precioso were on board the Chin-chin taxicab driven by the deceased. He was seated in front; while Precioso was at the back seat. He claimed that the deceased overcharged them and asked for P80.00, when the usual fare was only P40.00. He insisted in paying only P40.00, which infuriated the deceased. When he extended his hand to tender the P40.00, the deceased slapped his hand, causing the money to fall on the floor of the cab. The deceased then immediately applied the brakes and blew his horn. Accused-appellant asked why he slapped his hand, and the deceased punched him on the left face. Accused-appellant tried to hit back, but the deceased allegedly drew a gun from his waist. Accused-appellant declared that he and his companion tried to wrestle the gun away from the deceased. In the ensuing affray, accused-appellant was able to take hold of the gun. He was so nervous that when the deceased tried to get back the gun, it went off and hit the latter. Frightened and shocked by the incident, accused-appellant and Precioso ran toward the field at the back of the Florete Compound, where they waited for the police officers to arrive so they can turn themselves in.[10]

On June 17, 1997, the trial court rendered the assailed decision, the dispositive portion of which reads:

Accordingly, the Court, finding the accused, Sherjohn Arondain and Jose Precioso, guilty beyond reasonable doubt of the crime of Frustrated Robbery with Homicide as defined and punished under Article 297 of the Revised Penal Code, hereby sentences each of them to suffer the following penalties:

a)

Reclusion Perpetua with such accessories as provided in Article 41 of the Revised Penal Code;

b)

To jointly reimburse the family of the victim the amount of P50,000.00;

c)

To jointly reimburse the family of the victim P67,677.00 as expenses for his wake and burial;

d)

To jointly pay the victim's family the amount of P312,000.00 representing the loss of support which the family was deprived as a result of his death; and

e)

To jointly pay the wife of the victim the amount of P300,000.00 as moral damages and P50,000.00 as exemplary damages.

The Court, likewise finding accused Sherjohn Arondain guilty beyond reasonable doubt of the crime of Illegal Possession of Firearm, hereby sentences him to suffer the penalty of death in accord with the first paragraph of

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Section 1 of PD 1866, as amended.

SO ORDERED.[11]

Accused-appellant contends that:

I

THE TRIAL COURT ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF FRUSTRATED ROBBERY WITH HOMICIDE AS DEFINED AND PUNISHED UNDER ARTICLE 297 OF THE REVISED PENAL CODE.

II

THE TRIAL COURT ERRED IN APPRECIATING THE GENERIC AGGRAVATING CIRCUMSTANCE OF NIGHTTIME AGAINST THE ACCUSED-APPELLANT.

III

THE TRIAL COURT ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF ILLEGAL POSSESSION OF FIREARM AND SENTENCING HIM TO SUFFER THE PENALTY OF DEATH.

IV

THE TRIAL COURT ERRED IN NOT FINDING THE ACCUSED-APPELLANT ONLY GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF HOMICIDE.

V

THE TRIAL COURT ERRED IN NOT APPRECIATING IN FAVOR OF THE ACCUSED-APPELLANT THE MITIGATING CIRCUMSTANCE OF VOLUNTARY SURRENDER.[12]

Accused-appellant does not deny authorship of the victim's death. He contends, however, that the killing of the victim was not on occasion or by reason of robbery, hence, he should not have been convicted for the complex crime of robbery with homicide, but only for homicide.

To sustain a conviction for robbery with homicide, the prosecution has the onus probandi to establish the following elements: (a) the taking of personal property with the use of violence or intimidation against a person; (b) the property thus taken belongs to another; (c) the taking is characterized by intent to gain or animus lucrandi; and (d) on the occasion of the robbery or by reason thereof, the crime of homicide, which is therein used in a generic sense, was committed.[13]

In People v. Suza,[14] we ruled that "in order to sustain a conviction for robbery with homicide, it is necessary that the robbery itself be proven conclusively as any other essential element of a crime. In order for the crime of robbery with homicide to exist, it is necessary that it be clearly established that a robbery has actually taken place, and that, as a consequence or on the occasion of such robbery, a homicide be committed. Where the evidence does not conclusively prove the robbery, the killing of the victim would, therefore, be classified either as a simple homicide or murder, depending upon the absence or presence of any qualifying circumstance, and not the complex offense of robbery with homicide."

In the case at bar, the trial court's conclusion that the killing of the deceased was done on occasion or by reason of robbery was based on the following circumstances: 1) that the victim's wallet containing a small amount of money was found beside his dead body and no longer in his pocket; 2) the presence of money in paper bills of different

denominations amounting to a total of P1,040.00 scattered on the floor of the front seats, and on the ground beneath the doors of the taxicab; 3) the statement of accused-appellant immediately after his arrest that he shot the victim because the latter refused his demand for money, which statement is allegedly admissible as part of the res gestae.[15]

Based on applicable jurisprudence, we find that the trial court erred in finding accused-appellant guilty of the complex crime of robbery with homicide. The confession made by the accused-appellant admitting the crime of frustrated robbery cannot be admitted as part of res gestae. It must be stressed that said statement, if it was at all made by accused-appellant, was obtained in violation of his constitutional rights. Said confession was given after he was arrested and without the assistance of counsel. He was not even informed of his right to remain silent or right to counsel. From the time he was arrested and deprived of his freedom, all the questions propounded on him by the police authorities for the purpose of eliciting admissions, confessions, or any information came within the ambit of a custodial investigation.[16] As such, he was entitled to the rights enshrined under Article III, Section 12, of the Constitution. Failing to observe this constitutional mandate, the alleged confession of accused-appellant cannot be admitted as evidence against him.

Absent accused-appellant's confession, only two pieces of circumstantial evidence remain to prove the crime of frustrated robbery, to wit: 1) that the victim's wallet containing a small amount of money was found beside his dead body and no longer in his pocket; and 2) the scattered money in paper bills of different denominations amounting to a total of P1,040.00. A combination of these circumstances, however, is not sufficient to establish intent to gain or animus lucrandi. That there was a struggle between the accused-appellant and the victim is not denied. Thus, the probability that the scattered money bills was caused by the scuffle between the two cannot be discounted. As to the cause thereof, the prosecution failed to substantiate their claim of an attempt to unlawfully take the deceased's money. There was no proof that the victim's wallet which was found beside him was taken out from his pocket by accused-appellant. Prosecution witness John Ballo, who saw accused-appellant come out of the victim's taxicab, never testified that accused-appellant robbed the victim. His declaration was that accused-appellant went out of the cab carrying a gun. Nowhere in his testimony did he say that he saw accused-appellant attempting to rob, or walking away with the money of the victim.

In the absence of clear and convincing evidence that accused-appellant committed frustrated robbery, he should only be found guilty of the crime of homicide.

In convicting accused-appellant, the trial court appreciated the aggravating circumstance of nighttime, though the same was not alleged in the information. In People v. Ramirez,[17] citing the case of People v. Gano,[18] the Court held that "pursuant to the amended provisions of Rule 110, Sections 8 and 9, of the Revised Rules on Criminal Procedure, which took effect on December 1, 2000, aggravating as well as qualifying circumstances affecting the commission of the crime, must be alleged in the information, otherwise, they cannot be considered against the accused even if proven at the trial." This rule may be applied retroactively, because it is favorable to the accused. Thus, nighttime should not be appreciated as an aggravating circumstance considering that the same was not alleged in the information.

At any rate, even if nighttime was alleged in the information, the same will still not affect accused-appellant's criminal liability as there was no showing that he deliberately sought nocturnity to facilitate the commission of the crime, or that it insured his immunity from capture.[19]

For the mitigating circumstance of voluntary surrender, accused-appellant must prove that: (1) he had not been actually arrested; (2) he surrendered himself to a person in authority or the latter's agent; and (3) the surrender was voluntary. There must be a showing of spontaneity and an intent to surrender unconditionally to the authorities,

either because the accused acknowledges his guilt or he wishes to spare them the trouble and expense concomitant to his capture.[20]

In the case at bar, voluntary surrender cannot mitigate the liability of accused-appellant considering that his surrender was not in fact voluntary. The records show that he and his cohort immediately fled and hid behind the Florete Compound right after the shooting incident. It was only when accused-appellant realized that the presence of police officers in the field precluded his escape that he gave himself up.

In the two informations filed against accused-appellant, he was charged for two separate crimes, namely, robbery with homicide, and illegal possession of firearm under P. D. No. 1866. After trial, a decision was rendered applying the then prevailing ruling in People v. Quijada,[21] that the killing of a person with the use of an unlicensed firearm gave rise to two separate offenses, namely, (1) homicide or murder under the Revised Penal Code; and (2) illegal possession of firearm in its aggravated form. Consequently, he was found guilty of frustrated robbery with homicide and was sentenced to suffer the penalty of reclusion perpetua; and of Qualified Illegal Possession of Firearm, and was accordingly sentenced to suffer the penalty of death.

With the passage of Republic Act No. 8294, however, the use of an unlicensed firearm in the commission of homicide or murder is no longer treated as a separate offense, but only as a special aggravating circumstance. Moreover, under said Act, only one crime is committed, i.e., homicide or murder with the aggravating circumstance of illegal possession of firearm, and only one penalty shall be imposed on the accused.[22]

R.A. No. 8294 favors the accused-appellant in the instant case since it treats the two offenses for which he was charged only as a single offense. Hence, the amendatory provision should be retroactively applied to accused-appellant, who was not shown to be a habitual delinquent. Accordingly, he should be acquitted in Criminal Case No. 47067, for violation of P. D. No. 1866.

Notably, even in the absence of R.A. No. 8294, accused-appellant cannot be convicted of illegal possession of firearm in its aggravated form, much more be meted out the penalty of death for the reason that the information in Criminal Case No. 47067 charged him only with simple illegal possession of firearm. The information is bereft of any allegation that an unlicensed firearm was used in killing the victim. Without said allegation, accused-appellant cannot be convicted of aggravated illegal possession of firearm under Sections 1 and 2 of P.D. No. 1866, without violating his constitutional right to be informed of the nature and cause of the accusation against him.

Moreover, even assuming that there was an allegation that an unlicensed firearm was used in murder or homicide, still, the imposition of the death penalty on accused-appellant was erroneous. In People v. Nepomuceno, Jr.,[23] we pointed out that:

> As was emphasized in Quijada, under the second paragraph of Section 1 of P.D. No. 1866 the commission of murder or homicide with the use of an unlicensed firearm served to aggravate the offense of illegal possession of firearm and, accordingly, increased the penalty prescribed in the first paragraph of the Section, i.e., from "reclusion temporal in its maximum period to reclusion perpetua" to the single indivisible penalty of death.
>
> It must be underscored that although R.A. No. 7659 had already taken effect at the time the violation of P.D. No. 1866 was allegedly committed by [accused-appellant], there is nothing in R.A. No. 7659 which specifically reimposed the death penalty in P.D. No. 1866. Without such reimposition, the death penalty imposed in Section 1 of P.D. No. 1866 for aggravated illegal possession of firearm shall remain suspended pursuant to Section 19 (1) of Article III of the Constitution. Conformably therewith, what the trial court could impose was reclusion perpetua.

Applying Article 249, in relation to Article 64, paragraph 1 of the Revised Penal Code, reclusion temporal, which

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is the penalty for homicide, shall be imposed in its medium period, there being no modifying circumstance attendant in the commission of the crime. Since accused-appellant is entitled to the benefits of the Indeterminate Sentence Law,[24] he can thus be sentenced to an indeterminate penalty, the maximum of which shall be within the range of reclusion temporal in its medium period; and the minimum, within the range of prision mayor, the penalty next lower to that prescribed.

Anent accused-appellant's civil liability, the following guidelines regarding the award of actual damages representing burial, wake, and funeral expenses, laid down in the case of People v. Degoma,[25] are pertinent, thus:

> ... Of the expenses allegedly incurred, the Court can only give credence to those supported by receipt and which appear to have been genuinely incurred in connection with the death, wake or burial of the victim. Thus, the Court cannot take account of receipts showing expenses incurred before the date of the slaying of the victim; those incurred after a considerable lapse of time from the burial of the victim and which do not have any relation to the death, wake or burial of the victim; those incurred for purely aesthetic or social purposes, such as the lining with marble of the tomb of the victim; those which appear to have been modified to show an increase in the amount of expenditure such as by adding a number to increase the purchase value from tens to hundreds; those expenditures which could not be reasonably itemized or determined to have been incurred in connection with the death, wake or burial of the victim; those which, would nonetheless, have been incurred despite the death, wake and burial of the victim, the death, wake and burial being merely incidental; and those which were not in fact shouldered by the immediate heirs of the victim, such as plane tickets by relatives or in-laws. ...

Accordingly, the P67,677.00 funeral, wake, and burial expenses awarded by the trial court should be reduced to P17,818.40, being the total amount of expenses which were reasonably itemized, supported by receipts, and determined to have been incurred in connection with the funeral, wake or burial of the victim.

The records reveal that at the time of his death, the victim was a 48-year old taxi driver, earning an average daily wage of P300.00 or P9,000.00 a month.[26] Hence, accused-appellant should indemnify the heirs of the deceased the amount of P1,151,820.00, for the deceased's loss of earning capacity, computed pursuant to the following formula,[27] to wit -

> Net Earning Capacity (x) = Life Expectancy x Gross Annual Income - Living Expenses (50% of gross Annual Income)
>
> where life expectancy = 2/3 x (80 - age of deceased [48 years])
>
> x = 2/3 x (80 - 48) x [(P108,000.00) - (P54,000.00)]
>
> x = [2/3 x 32] x P54,000.00
>
> x = 21.33 x P54,000.00
>
> x = P1,151,820.00

While the testimony of the victim's widow that the death of her husband caused her grief and sorrow justifies the award of moral damages, the award of P300,000.00 must, however, be reduced to P50,000.00 in line with prevailing jurisprudence.[28]

Under Article 2230 of the Civil Code, exemplary damages may be imposed when the crime was committed with one or more aggravating circumstances. Since there is no aggravating circumstance attendant in the present case, the award of P50,000.00 exemplary damages should therefore be deleted.

The Court notes that accused Jose Precioso who was sentenced to suffer the penalty of reclusion perpetua for robbery with homicide, did not file an appellant's brief. Nevertheless, he shall benefit from the favorable decision of this Court with respect to accused-appellant Sherjohn Arondain. Section 11 (a), Rule 122, of the Revised Rules on Criminal Procedure, provides that: "An appeal taken by one or more of several accused shall not affect those who did not appeal, except insofar as the judgment of the appellate court is favorable and applicable to the latter." Considering that the conclusions arrived at in the present case are similarly applicable to accused Jose Precioso, he should likewise be found guilty only for the crime of homicide.

The same goes for the modifications of the civil liability. Thus, the reduction of the award of moral damages and funeral, burial, and wake expenses to P50,000.00 and P17,818.40, respectively, as well as the deletion of exemplary damages, which are favorable to accused Jose Precioso, should also be applied to him.

The additional monetary award imposed upon accused-appellant Sherjohn Arondain, which are clearly not favorable to accused Jose Precioso, shall, however apply only to the former who pursued the present appeal.[29]

WHEREFORE, the Decision of the Regional Trial Court of Iloilo City, Branch 25, in Criminal Case Nos. 47066 and 47067 is MODIFIED, as follows:

1) In Criminal Case No. 47066, accused-appellant Sherjohn Arondain and accused Jose Precioso, are found guilty beyond reasonable doubt of the crime of Homicide, and is sentenced to suffer an indeterminate penalty ranging from Seven (7) years of prision mayor, as minimum, to Fourteen (14) years, Eight (8) months, and One (1) day, of reclusion temporal, as maximum.

2) Accused-appellant Sherjohn Arondain and accused Jose Precioso are sentenced to pay, jointly and severally, the following amounts to the heirs of the victim, to wit: a) P50,000.00 as death indemnity; (b) P17,818.40, as funeral, burial, and wake expenses; and c) P50,000.00 by way of moral damages. The award of P50,000.00 exemplary damages is deleted. Accused-appellant Sherjohn Arondain is further ordered to pay the heirs of the victim the amount of P1,151,820.00 for loss of earning capacity of the deceased.

3) In Criminal Case No. 47067, for violation of P.D. No. 1866, accused-appellant Sherjohn Arondain is hereby ACQUITTED.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Melo, Puno, Vitug, Kapunan, Mendoza, Panganiban, Quisumbing, Pardo, Buena, De Leon, Jr., and Sandoval-Gutierrez, JJ., concur.

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[1] Penned by Judge Bartolome M. Fanuñal.

[2] Sometimes spelled as Melendez in the decision.

[3] TSN, December 3, 1996, pp. 6-8 and December 12, 1996, p. 26.

[4] TSN, December 12, 1996, pp. 17-20.

[5] TSN, January 6, 1997, pp. 8-10, and 13.

[6] TSN, December 3, 1996, pp. 9-13.

[7] Ibid., pp. 13-14.

[8] TSN, December 5, 1996, p. 5.

[9] TSN, December 12, 1996, pp. 40-41.

[10] TSN, March 10, 1997, pp. 2 and 14-31; TSN, March 24, 1997, pp. 2 and 17.

[11] Rollo, pp. 37-38.

[12] Rollo, pp. 57-58.

[13] People v. Gavina, 264 SCRA 450, 455 [1996], citing People v. Esperraguerra, et al., 248 SCRA 207 [1995].

[14] 330 SCRA 167, 187 [2000], citing People v. Pacala, 58 SCRA 370 [1974].

[15] Decision, Rollo, pp. 33-34.

[16] People v. de la Cruz, 279 SCRA 245, 250-251 [1997], citing People v. Marra, 236 SCRA 566 [1994].

[17] G.R. No. 136094, April 20, 2001.

[18] G.R. No. 134373, February 28, 2001.

[19] People v. Toyco, Sr., G.R. No. 138609, January 17, 2001, citing People v. Amamangpang, 291 SCRA 638 [1998].

[20] Roca v. Court of Appeals, G.R. No. 114917, January 29, 2001, citing People v. Ignacio, 325 SCRA 375 [2000]; People v. Deopante, 263 SCRA 691 [1996]; and People v. Salas, 327 SCRA 319 [2000].

[21] 259 SCRA 191 [1996].

[22] People v. Casingal, G.R. No. 132214, August 1, 2000, citing People v. Castillo, 325 SCRA 613 [2000].

[23] 309 SCRA 466, 473 [1999].

[24] Act No. 4103, as amended.

[25] 209 SCRA 266, 274 [1992].

[26] People v. Galido, 326 SCRA 187, 197 [2000].

[27] People v. Bonito, G.R. No. 128002, October 10, 2000.

[28] People v. Mataro, G.R. No. 130378, March 8, 2001, citing People v. Gutierrez, 203 SCRA 643 [1999] and People v. Verde, 302 SCRA 690 [1999].

[29] People v. De Lara, 334 SCRA 414, 436 [2000].

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