

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. GEORGE “JORGE” BOLINGET Y BAGTAN (AT LARGE); ESTEBAN DOMACYONG Y PAKSAY; RICHARD PALEYAN OTHERWISE KNOWN AS ERICK LUMAS-E Y KI...

G.R. Nos. 137949-52. December 11, 2003

Ponente: PUNO, J.

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PUNO, J.:

This is an appeal from a consolidated decision rendered by Branch 4, Regional Trial Court of Baguio City in Criminal Case Nos. 11445-R, 11446-R and 11443-R.

Appellants Esteban Domacyong y Paksay ("Domacyong") and Richard Paleyan a.k.a. Erick Lumas-e y Kimongo ("Paleyan") along with seven (7) others were charged with the crime of robbery with homicide in Criminal Case No. 11443-R in an amended information which reads as follows:

The undersigned accuses GEORGE "JORGE" BOLINGET Y BAGTANG (sic), ESTEBAN DOMACYONG Y PAKSAY, RICHARD PALEYAN otherwise known as ERICK LUMAS-E Y KIMONGO, REY BUYAGAN Y GENEYEN, FRANCIS KILONGAN, BONG PATAS, THOMPSON "TAMSON" GADGADAN, DANIEL LICDEMAN, GERRY BALOYO and SICDOD "FNU" of the crime of ROBBERY WITH HOMICIDE, committed as follows:

That on or about the 28[th] day of May 1993, in the City of Baguio, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually aiding one another, with intent to gain and being then armed with guns, and by means of violence and intimidation, did then and there willfully, unlawfully and feloniously take, rob and carry away cash money amounting to about P140,000.00 more or less(,) from the Victoria Supermart, owned and managed by Tony Ang; that on the occasion and by reason of said robbery(,) and for the purpose of enabling them to take, steal, rob and carry away the said amount of money(,) the above-named accused did then and there willfully, unlawfully and feloniously and with intent to kill, engaged (sic) responding policemen and law enforcing agents in a shootout, resulting to the death of P/Insp. Nestor Visitacion and Cesar Reyes as well as grave injuries to Peter Flores y Carbonell and Domingo Santiago.

CONTRARY TO LAW.

Domacyong and Paleyan were also separately charged with the crime of Violation of P.D. No. 1866 (Illegal Possession of Firearm and Ammunition), in a similarly-worded information in Criminal Case Nos. 11445-R and 11446-R for possession of (1) a .45 caliber pistol, with no serial number, with one bullet, (2) a .45 pistol with Serial No. 604262 and six (6) live ammunitions, and (3) a .38 caliber with five (5) live ammunitions, respectively.

The cases were consolidated. Nineteen witnesses were presented by the prosecution.

Witness Nelson Nialla ("Nialla"), the security guard on duty at Victoria's Supermart, narrated that on May 28,

1993, at about 11:00 in the morning, accused-appellants, along with several others, barged into the supermarket and announced a hold-up.[1] Accused Jorge Bolinget slipped behind cashier Gemma Gabuat, poked a gun at her right side, ordered her to open the cash register and scooped all the money.[2] His testimony was corroborated by Carina Sernadilla, the cashier manning the counter beside Gemma's.[3] Nialla also testified that the appellants, Paleyan and Domacyong, pointed their guns at him and ordered him to squat. Paleyan fired at the display and then took the money from the cash registers, while Domacyong entered the room of Tony Ang ("Ang"), the store owner. Nialla also noticed a man in civilian clothes outside the supermarket. He was peeping inside the supermarket and was in the act of drawing something from his front waistline. At about the same time that the malefactors exited the building, he heard a gunshot and saw the man in civilian clothes fall to the ground. He also saw a man being lifted to a taxi. Later, he learned that two persons, both CIS members, died as a result of the robbery. The two were Cesar Reyes and Nestor Visitacion.[4]

Albert Lorenzana testified that he was a bagger at Victoria's Supermart. During the incident, he was at the bodega to get some goods. Returning to the supermarket, he met the appellant Domacyong, carrying a black bag on his shoulder on his way to Ang's office.[5] He heard someone shout "hold-up." He turned his head towards the voice and saw accused Bolinget pointing a gun at cashier Gemma Gabuat.[6] Bolinget then took the money from the cash register.

Tony Ang, Victoria's Supermart owner, testified that he was inside his office attending to a customer when a man barged in, and at gunpoint, announced a hold-up. He was ordered not to look up and to hand over the money. The gunman placed the money inside a bag and rushed outside. The money totaled P140,000.00, more or less.[7]

Chief Inspector Avelino Edralin ("Inspector Edralin"), then the Assistant Chief of Police of Baguio, heard at their radio room one of their policemen asking for help as there was an on-going robbery at Session Road. Together with SPO1 Leonardo Gomez, he boarded their mobile car and drove to Session Road. Taking Calderon Street, they passed by SPO1 Hidalgo and told him to join them in the mobile. They saw appellant Domacyong running with a gun at Kisad Road. Inspector Edralin shouted at the man to stop and raise his hands. He and SPO1 Juanito Kimay ("SPO1 Kimay") approached Domacyong, while Hidalgo and Gomez acted as back-ups. They arrested him, confiscated his gun and brought him to the police station. The gun was a .45 caliber pistol[8] without a magazine but with one live bullet inside the chamber.[9]

SPO1 Kimay testified that at the time of the incident, he was shopping with his wife at 456 Department Store along Session Road. Hearing gunshots, he went out of the store and met SPO1 Reynaldo Soria ("SPO1 Soria"). SPO1 Soria told him there was a robbery and the robbers were escaping towards Calderon Street on board a taxi. They exchanged fire with the robbers and tailed their taxicab towards Harrison Road. Due to heavy traffic near Land Bank, the robbers alighted from their taxicab and scurried in different directions towards Burnham Park. Kimay followed one of them up to Kisad Road near Cholo's Restaurant. While he was approaching the man, Inspector Edralin arrived together with Gomez and Hidalgo.[10] They arrested the man who turned out to be appellant Domacyong. They confiscated his firearm, a .45 caliber pistol.[11]

SPO1 Soria and SPO1 Federico Leyba testified that at the time of the robbery, they were routing traffic at the intersection of Harrison Road and Magsaysay Avenue. They received a radio message about a robbery at Victoria's Supermart. They drove their motorcycles to the supermarket. At the Mabini and Session Road intersection, they encountered the robbers who fired at them. They got off their motorcycles and gave chase to one of the suspects on foot. They caught up with the suspect and arrested him at the Burnham Lake Drive. The suspect is accused Bolinget.[12] They confiscated from him a .38 caliber revolver[13] and some money.[14]

SPO2 Rey Ekid, a member of the Baguio Police Station, narrated how he assisted in pursuing the robbers of

Victoria's Supermart. He boarded their mobile car together with Sgt. Ruben Gomez and PO1 Eduardo Cocal and rushed to the place. Upon learning that the armed robbers fled towards Burnham Park, he and PO1 Copal alighted from their mobile and walked until they reached Cholo's Restaurant along Kisad Road. They saw four persons scaling the walls of the Athletic Bowl, and fired warning shots. The men did not stop and upon reaching the other side of the wall, scampered in different directions. One of them ran to the middle of the Athletic Bowl and Ekid was able to arrest him. He identified him as appellant Paleyan.[15] Appellant Paleyan surrendered a .45 cal. firearm[16] which he threw to the ground in the course of his arrest.

Inspector Oasan, then the Chief of the Investigation Section of the Baguio City Police Station, likewise testified about his role in the Victoria's Supermart robbery. Upon knowing of the incident, he summoned Sgt. Elmer Cruz and PO3 Romeo Agngaray and proceeded to the place on board Cruz' private car. Along the way, they were informed that the robbers fled to Burnham Park. Oasan alighted and went on foot towards Mabini Street while his companions proceeded by car towards Calderon Street. Upon reaching Burnham Lake Drive, he met several policemen, including SPO1 Leyba, who had arrested a person who was turned over to him. He identified the person as accused Bolinget.[17] SPO1 Leyba and SPO1 Soria also handed to him some money which they recovered from Bolinget. They executed a joint affidavit on the turn-over of the cash amount.[18] Oasan then returned the money amounting to P16,460.50 to Ang, the owner of Victoria's Supermart.[19]

Inspector Oasan also testified that SPO1 Ekid turned over a firearm of .45 cal. to him along with a magazine containing five (5) ammunitions.[20] He likewise received a .38 cal. revolver from Mr. Rabang, the security officer of Burnham Park.[21]

Lilian Lauron, Records Officer III of the Records Legal & Research Branch, Firearms and Explosives Office of Camp Crame, and SPO3 Elpidio Agngarayngay, records verifier of the Records Branch of Camp Crame's Firearms and Explosives Office, also took the witness stand. They testified that the records on file at the Firearms and Explosives Office show that appellants Domacyong and Paleyan and accused Bolinget are not licensed or registered firearm holders.[22] A certification to that effect was likewise issued by Edwin C. Roque, Senior Inspector of the PNP and Chief, Records Br., FEO.[23]

A forensic chemist of the National Bureau of Investigation, Maria Carina Madrigal-Javier, testified that she conducted a chemistry examination on the paraffin cast done by their laboratory technician on the hands of appellants Domacyong and Paleyan and accused Bolinget. The results of her tests showed the presence of nitrates on the hands of accused Bolinget[24] and appellant Domacyong,[25] but none on the hands of appellant Paleyan.[26]

Dr. Jose Bugayong, Jr. conducted the medical examination of Cesar Reyes ("Reyes") at the St. Louis University Hospital. He testified that Reyes was still conscious but bleeding profusely from sustained gunshot wounds which affected his vital organs at the time he was brought to the hospital. He operated on the victim with the help of Senior Resident, Dr. Paul Etiket. Unfortunately, Reyes died after twenty hours due to massive and extensive bleeding.[27]

Dr. Tedler Depaynos examined Nestor Sabandal Visitacion at the St. Louis University Hospital. He testified that the gunshot wound sustained by Visitacion was fatal as it damaged his vital organs. He died after three days.[28]

The affidavits[29] executed by appellant Domacyong and accused Rey Buyagan were identified in court by NBI agent George Jularbal. He declared that before he took down their statements, he apprised them of their constitutional rights. They were assisted by PAO lawyer, Atty. Panfilo Salango.

The civil liabilities of the accused and the appellants were the subject of the testimonies of Domingo Santiago, the

bystander who got hurt in the incident and Imelda Reyes, the widow of Cesar Reyes. Santiago narrated that he was in front of McDonald's when he got hit by a bullet fired from the gun of one of the robbers, whom he identified as appellant Domacyong. The bullet intended for the policeman ricocheted and hit him on his left leg. He was treated at the Baguio General Hospital for his injuries.[30] Imelda Reyes testified on the funeral expenses they incurred in the amount of P32,579.00.[31] She likewise declared that they spent P17,300.00 as hospitalization expenses. The expenses were not contested by the defense.

The accused waived presentation of evidence in their behalf and manifested that they were submitting the case for decision. They were convicted by the trial court in a Judgment, the dispositive portion of which states:

WHEREFORE, judgment is rendered as follows:

CRIMINAL CASE NO. 11445-R

The court finds the accused Esteban Domacyong y Paksay guilty of illegal possession of a .45 caliber pistol; applying R.A. 8294 which amended PD 1866, sentences him to 7 years 4 months and 1 day of prision mayor to 8 years of prision mayor and to pay a fine of P30,000.00.

CRIMINAL CASE NO. 11446-R

The court finds the accused Erick Lumas-e y Kimongo (Richard Paleyan) guilty of illegal possession of 1 caliber .45 pistol with 6 live ammunition; applying R.A. 8294 which amended PD 1866, sentences him to 7 years 4 months and 1 day of prision mayor to 8 years of prision mayor and to pay a fine of P30,000.00.

CRIMINAL CASE NO. 11443-R

The court acquits Rey Buyagan y Geneyen and Francis Kilongan for insufficiency of evidence, but finds the accused George "Jorge" Bolinget y Bagtang, Esteban Domacyong y Paksay and Richard Paleyan (aka Erick Lumas-e) y Kimongo GUILTY beyond reasonable doubt of the crime of Robbery with Homicide as penalized in paragraph 1, Article 294 of the Revised Penal Code aggravated by use of unlicensed firearms (sic), hereby sentences George "Jorge" Bolinget, Esteban Domacyong and Richard Paleyan (aka Erick Lumas-e) to Reclusion Perpetua and to pay jointly and severally the:

Heirs of Cesar Reyes the amount of P50,000.00 by way of indemnification for his death; P72,599.00 for hospitalization and funeral expenses; P200,000.00 by way of moral damages;

Heirs of Nestor Visitacion the amount of P50,000.00 by way of indemnification for his death; P88,096.65 for actual expenses; P200,000.00 by way of moral damages;

Domingo Santiago the amount of P1,000.00 for actual expenses.

and to pay costs.

Let a warrant of arrest issue for George "Jorge" Bolinget, who had escaped from detention, for the service of his sentence as hereinbefore set forth.

Send the records of Criminal Case No. 11443-R to the Archives pending the apprehension of accused Bong Patas, Thompson Gadgadan, Daniel Licdeman, Gerry Baloyo, and Sicnud (FNU), for whom a warrant of arrest is ordered to issue.

SO ORDERED.[32]

Appellants Domacyong and Paleyan raise in this appeal, the lone error that "the Regional Trial Court erred in finding the accused guilty beyond reasonable doubt of the complex crime of robbery with homicide without stating the facts and the law on which it was based. There were no clear and convincing evidence whatsoever to

show and prove that the accused were the ones who were responsible for the death of the two persons when the alleged robbery was committed." [33] They contend that there was no proof presented by the prosecution on the manner surrounding the death of, and the identity of, the person(s) who shot the victims during the robbery. They submit that the crime of homicide not having been proven, it cannot be complexed with robbery. [34]

We uphold the ruling of the trial court.

Article 294 (1) of the Revised Penal Code provides:

ART. 294. Robbery with violence or intimidation of persons – Penalties. – Any person guilty of robbery with the use of violence against or any person shall suffer:

- The penalty of reclusion perpetua to death, when by reason or on occasion of such robbery, the crime of homicide shall have been committed, or when the robbery shall have been accompanied by rape or intentional mutilation or arson. [35]

x x x x x x x x. (emphasis supplied)

The crime of robbery with homicide requires proof of the following elements: (1) the taking of personal property with violence or intimidation against persons; (2) the property taken belongs to another; (3) the taking was done with *animo lucrandi*; and (4) on the occasion of the robbery or by reason thereof, homicide was committed. [36]

Well-entrenched in jurisprudence is the doctrine that when homicide takes place as a consequence or on the occasion of a robbery, all those who took part in the robbery are guilty as principals in the complex crime of robbery with homicide, even if they did not actually take part in the homicide. The exception is when it is clearly shown that the accused endeavored to prevent the unlawful killing. [37]

In the case at bar, the lack of direct evidence on how the homicides were committed matters little. The circumstantial evidence leaves scant doubt on the part and participation of the appellants.

Witness Nialla saw the victim Cesar Reyes, a CIS agent, standing outside the supermart while the robbery was ongoing. He was peeping inside the supermarket and his hand was holding something in his waist. After the robbery and while the malefactors were running out of the supermarket, Nialla heard a gunshot and saw Reyes slump to the ground. He testified:

PROSECUTOR CARBONELL:

Q:

What else happened after that?

A:

When the said group took all the money from the supermart, they ran outside the supermart.

Q:

Now, before the group ran outside while you were in a squatting position, if you were ordered to squat, did you notice anything that happened at the entrance of the (sic) Victoria's Supermart?

A:

Yes, Sir.

Q:

What did you notice there?

A:

I noticed a man in civilian clothes peeping at the supermart.

Q:

Aside from peeping, what was he doing at that time when you noticed him?

A:

He is (sic) about to draw something from his left front waistline. (Interpreter: Witness drawing by putting his right hand on his left waistline.)

Q:

Then, what else happened?

A:

After which I heard a gunshot.

Q:

From where did that gunshot come from?

A:

Outside the supermart.

Q:

And what happened to the man who was peeping and was about to draw something from his front left waistline?

A:

I saw the man fell (sic) on (sic) the ground.

Q:

Do you know the reason why he fell on (sic) the ground?

A:

I think he was shot.

X X X X X X X X

PROSECUTOR CARBONELL:

Q:

When you were not able to catch up with any of the persons who held-up the Victoria Supermart, what did you do, if any?

A:

I go (sic) back to the supermart and check (sic) if any customers are (sic) hurt.

Q:

While going back to the Victoria Supermart, what, if any, did you observe?

A:

I saw a man, somebody being lifted to board a taxi.

Q:

What was the condition of that man that (sic) was boarded to (sic) a taxi? Was he lying down? Was he standing?

A:

He is (sic) lying down.

Q:

How many persons were trying to board this man to the taxicab?

A:

Three persons.

Q:

Is it your testimony that they were carrying him while he was lying down?

A:

He was lying down.

Q:

Then they carried him?

A:

They carried him.

Q:

Did you come to know the name of this person that (sic) was boarded on a taxi by the three persons?

A:

No, Sir.

Q:

Later, did you come to know who was this person?

A:

Yes, Sir.

Q:

Who was this person?

A:

I later on know (sic) that he is (sic) a member of the CIS.

Q:

Did you come to know his name?

A:

No, Sir.

Q:

Did you come to know that aside from the person whom you saw being boarded on a taxi, were there other persons injured at that time?

A:

I do not know, Sir.

Q:

You do not know?

A:

I do not know, Sir.

Q:

Later, did you come to know whether anyone died as a result of that hold-up at Victoria Supermart?

A:

Yes, Sir.

Q:

How many persons died?

A:

Two (2) persons.

Q:

And who are these persons?

A:

They are both members of the CIS.

Q:

Do you know their names?

A:

I later know (sic) that one is named Cesar Reyes.

COURT:

Q:

Cesar Reyes?

A:

Yes, Sir.

Q:

And the other?

A:

I cannot remember the name anymore.

PROSECUTOR CARBONELL:

Q:

But, they are both members of the CIS?

A:

Yes, Sir. [38]

Appellants were arrested with guns in their possession right after the robbery took place. The expert forensic chemist of the NBI confirmed the presence of nitrates on the hands of appellant Domacyong and accused Bolinget, viz:

PROSECUTOR CARBONELL:

Q:

Upon receipt of the request for paraffin test marked in evidence as Exhibit "C," what did you do, Madam Witness?

A:

Sir, the date (sic), it was a Saturday when the request was submitted to the office and I was not the one who took the paraffin test on the left and right hands of the subjects, George Bolinget, Richard Paleyan and Ray Buyagan. I only conducted the chemistry examination on the paraffin cast of the above-mentioned persons.

Q:

Do you know who took the paraffin cast of the left and right hands of the three accused?

A:

Our laboratory technician.

Q:

By the name of?

A:

Ernesto Labayog.

x x x x x x x x

Q:

Will you tell this Honorable Court how that field examination was conducted?

A:

The paraffin cast, the left and on the right hands were treated with diphenylamine test(.) (A) blue speck which appeared (sic) on the cast indicates the presence of nitrates.

x x x x x x x x

Q:

Now after conducting the paraffin test (on the paraffin cast of the left and right hands of the accused George Bolinget), what did you find out?

A:

Upon treatment with diphenylamine on the left and right paraffin cast of subject George Bolinget y Bagtan specks resided out from the cast and I have numbered them and described as follows: (Showing the representation of the left and right hands of the subject are the crosses indicating the specks, numbered crosses therein).

x x x x x x x x

Q:

Now, I invite your attention to your "FINDINGS" in Exhibit "D," Your Honor and the findings states (sic) that - "The diphenylamine paraffin tests for nitrates conducted on the dorsal aspects of the left and right hands from the wrist-joints to the fingertips gave POSITIVE RESULTS with specks located as follows: Then there are entries on the left hand and then spaces. The entries, let us start with the entries for the left hand. In Item No. 1, you stated: `One (1) speck on the distal third, proximal phalanx, thumb;'" Did you indicate this speck on Exhibit "E"?

A:

Yes, Sir.

Q:

Where is that?

A:

The number one (1) on the left hand is the same as being described in my report as one phalanx thumb. The

same with specks on the "2, 3, 4, 5, 6" on the left hand.

Q:

And in all aspects, you were able to arrive at "1, 2, 3, 4, 5, 6" under the entries on the left hand?

A:

Yes, Sir, left hand.

Q:

Madam Witness, what does this, the presence of specks in Nos. "1, 2, 3, 4, 5 and 6" under the left hand indicate?

A:

It indicates the presence of nitrates so it is possible that the left hand was contaminated with nitrates.

Q:

And what if there are nitrates on the left hand?

A:

The person or subject could have fired a gun.

Q:

Let us go to the entries under the right hand. There are five numbers also. Did you indicate the specks in Exhibit "E"?

A:

Yes, Sir, the same thing again on the right hand, the numbered specks described or reflected in my report.

Q:

And, is it your testimony that with the presence of specks as you indicated in the right hand in Exhibit "E," the accused could have fired a gun?

A:

Considering the location, the number and the distribution of the specks, I could say that the subject or person could have fired a gun.[39]

PROSECUTOR CARBONELL:

Q:

Again, how many kinds of examination did you conduct on the paraffin cast of the left and right hands of Esteban Domacyon (sic) y Paksay?

A:

Only the chemical examination.

Q:

How was that done?

A:

The casts on the left and right hands was (sic) treated with defenelamine (sic) re-agent and from the paraffin cast indicating the presence of nitrates.

Q:

Did you prepare a sketch of the left and right hands and did you indicate in that sketch the location of the blue specks?

A:

Yes, sir.

PROSECUTOR CARBONELL:

The witness produced the sketch of the left and right hands of Esteban Domacyon (sic) y Paksay. For purposes of identification, we pray to be marked Exhibit "G." [40]

Appellant Paleyan's hands were found negative of nitrates. But that will not exculpate him. He participated in the robbery where two (2) persons were killed and another one was wounded. Absent any proof that he tried to prevent the killing and wounding of these victims, he is liable for the crime of robbery with homicide.

Domingo Santiago, the bystander who was injured in the incident, likewise identified appellant Domacyong as the person who fired the gun from which came the bullet that hit him, viz:

PROS. CARBONELL:

Q:

Do you know if the gunman fired at Soria?

A:

Yes, he fired.

Q:

How many times did he fire?

A:

He fired once.

Q:

Do you know if Soria was hit?

A:

He was not hit.

Q:

Who was hit instead?

A:

I was the one who was hit on the leg.

COURT:

Q:

Left leg?

A:

Left leg.

PROS. CARBONELL:

Q:

How far were you from the gunman from (sic) the time he fired the gun?

A:

Around 3 to 4 meters.

Q:

Should you see that person again who fired the gun at Soria, but hit you instead at your leg, should you see him again, would you be able to identify him?

A:

Yes, Sir.

Q:

Is he inside the courtroom?

A:

Yes, Sir.

Q:

Will you point to him.

MRS. PAQUITO:

Witness approaching somebody inside the courtroom who stood up and when asked, gave his name as Esteban Domacyong.

Q:

Are you sure that the person you saw fired (sic) at Soria is the person you identified this morning?

A:

Yes, Sir.

Q:

You are sure?

A:

Yes, Sir.[41]

Anent the gunshot wounds suffered by the deceased victims, Dr. Bugayong testified that he examined the victim, Cesar Reyes, around noon of May 28, 1993. He confirmed that Reyes died because of two gunshot wounds, the trajectory of which were "more or less horizontal." [42] Dr. Depaynos likewise testified that the trajectory of the single gunshot wound which caused the death of the victim, Nestor Visitacion Sebandal, was "more or less horizontal." [43]

Again, we reiterate the well-settled rule that as long as homicide resulted during, or because of, the robbery, even if the killing is by mere accident, the crime of robbery with homicide is committed. [44] As we repeatedly explain, it is enough that death results by reason or on the occasion of the robbery inasmuch as it is only the result obtained that is necessary, without reference or distinction as to the circumstances, causes, modes, or persons intervening in the commission of the crime. [45]

We now come to appellants' guilt for the crime of illegal possession of firearms. The trial court separately convicted appellants of the crime of violation of Republic Act No. 8294 [46] amending Presidential Decree No. 1866. The violation was also appreciated by the trial court to aggravate their penalty in the crime of robbery with homicide. We note that counsel for appellants included in their notice of appeal their conviction for illegal possession of firearms. Nonetheless, said counsel did not assail the said judgment with any particular assignment of error.

Republic Act No. 8294 provides that "if homicide or murder is committed with the use of an unlicensed firearm, such use of an unlicensed firearm shall be considered as an aggravating circumstance." [47] We have consistently ruled that if an unlicensed firearm is used in the commission of any other crime, there can be no separate offense of simple illegal possession of firearms. [48] Thus, in *People vs. Ladjaalam*, [49] we held:

. . . A simple reading thereof (R.A. No. 8294) shows that if an unlicensed firearm is used in the commission of any crime, there can be no separate offense of simple illegal possession of firearms. Hence, if the "other crime" is murder or homicide, illegal possession of firearms becomes merely an aggravating circumstance, not a separate offense. . . .

Moreover, penal laws are construed liberally in favor of the accused. In this case, the plain meaning of RA 8294's simple language is most favorable to herein appellant. Verily, no other interpretation is justified, for the language of the new law demonstrates the legislative intent to favor the accused.

In the cases at bar, the crime of robbery with homicide with the use of unlicensed firearms was committed by appellants. In line with law and jurisprudence, the use of unlicensed firearms merely aggravates the crime of robbery with homicide. It does not constitute a separate crime. Necessarily, the conviction of appellants for illegal possession of firearms has to be set aside.

Under Article 294 of the Revised Penal Code, a person guilty of the crime of robbery with homicide shall suffer the penalty of reclusion perpetua to death. There being an aggravating circumstance, the penalty of death is imposable in the case at bar. However, Republic Act No. 7659 (Death Penalty Law) was approved only on December 13, 1993. The penalty of death being disadvantageous to the appellants, the law cannot be given any retroactive effect. Hence, the proper penalty to be imposed on them is reclusion perpetua.

We modify the solidary civil liabilities of the appellants imposed by the trial court. The heirs of each victim are entitled to a civil indemnity of P50,000.00, without need for proof other than that death occurred as a result of the crime.[50] They are also entitled to moral damages in the sum of P50,000.00.[51] In accordance with Article 2230 of the Civil Code of the Philippines,[52] appellants are liable to pay the heirs of each victim, exemplary damages in the amount of P25,000.00 in view of the presence of an aggravating circumstance.[53] Anent actual damages, the defense admitted the funeral expenses of Cesar Reyes amounting to P32,579.00.[54] It also admitted the hospital expenses of Reyes in the amount of P17,300.00.[55] As to the victim Nestor Visitacion, the trial court issued an order dated February 28, 1995 stating that counsels of both sides stipulated on the following:

- That the wife of the late Lt. Nestor Visitacion by the name of Lina M. Visitacion incurred expenses in the amount of P88,096.65;
- The deceased Nestor Visitacion was at the age of 36 years at the time of his death;
- At the time of his death, Mr. Visitacion was a lieutenant or inspector of the PNP with a salary of P6,850.00 per month;
- x x x x x x x x x.[56]

Consequently, appellants are liable to pay the heirs of Visitacion P88,096.65 as actual damages. They are also liable for his loss of income in the amount of P1,191,900.00, computed as follows:

Life Expectancy – $2/3 \times (80 - \text{age of the victim at the time of death})$

– $2/3 \times (80 - 36)$

– $2/3 \times 44$

– 29 years

Gross Annual Income – gross monthly income x 12 months

– P6,850.00 x 12

– P82,200.00

Loss of Earning Capacity – Life Expectancy x [Gross Annual Income – Living Expenses[57]]

– 29 x [P82,200.00 – P41,100.00]

– 29 x P41,100.00

– P1,191,900.00.[58]

The award of actual expenses sought by Domingo Santiago cannot be granted for lack of proof.[59]

IN VIEW WHEREOF, the consolidated decision of Branch 4 of the Regional Trial Court of Baguio City is modified. In Criminal Case No. 11443-R, appellants Domacyong and Paleyan are held guilty of the complex crime of robbery with homicide aggravated by the use of an unlicensed firearm, and are sentenced to an indivisible penalty of reclusion perpetua. They are likewise jointly and severally liable to pay:

- The heirs of Cesar Reyes:
- P50,000.00 as civil indemnity;
- P50,000.00 as moral damages;
- P25,000.00 as exemplary damages; and
- P49,879.00 as actual damages.
- The heirs of Nestor Visitacion:
- P50,000.00 as civil indemnity;
- P50,000.00 as moral damages;
- P25,000.00 as exemplary damages;
- P88,096.65 as actual damages; and
- P1,191,900.00 for loss of income.

They are acquitted from the charge of illegal possession of firearms in Criminal Case No. 11445-R and Criminal Case No. 11446-R.

SO ORDERED.

Quisumbing, Austria-Martinez, Callejo, Sr., and Tinga, JJ., concur.

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- [1] TSN, Nelson Nialla, August 17, 1994, pp. 6-7.
[2] Id. at 8-9; TSN, Gemma Gabuat, July 4, 1994, pp. 6-8.
[3] TSN, Carina M. Sernadilla, June 21, 1994, pp. 4-5.
[4] TSN, Nelson Nialla, August 17, 1994, pp. 9-13.
[5] TSN, Albert Lorenzana, July 6, 1994, pp. 6-7.
[6] TSN, Albert Lorenzana, August 15, 1994, pp. 5-8.
[7] TSN, Tony Ang, July 5, 1994, pp. 4-6.
[8] Exhibit "M."
[9] TSN, Avelino Edralin, November 22, 1993, pp. 1-8.
[10] TSN, Reynaldo Kimay, November 8, 1994, pp. 4-8.

- [11] Id. at 9.
- [12] TSN, Franciso Leyba, January 24, 1994, p. 11; TSN, Reynaldo Soria, May 23, 1994, p. 9.
- [13] TSN, Franciso Leyba, January 24, 1994, pp. 11-15.
- [14] TSN, Reynaldo Soria, May 23, 1994, p. 14.
- [15] TSN, Rey Ekid, April 26, 1994, pp. 3-9.
- [16] Exhibit "V."
- [17] TSN, Gilbert Oasan, January 24, 1994, p. 23.
- [18] Exhibit "T;" Original Records, Vol. 2, p. 188.
- [19] Exhibit "U;" Original Records, Vol. 2, p. 189.
- [20] Exhibit "V."
- [21] Exhibit "Z."
- [22] TSN, Lilian Lauron, August 10, 1993, pp. 5-11; Elpidio Agngarayngay, November 9, 1993, pp. 3-10.
- [23] Exhibits "A" and "B;" Original Records, Vol. 2, pp. 169-170.
- [24] Exhibits "D" and "E;" Original Records, Vol. 2, p. 173; TSN, Ma. Carina Javier, November 16, 1993, pp. 6-10.
- [25] Exhibits "F" and "G;" Original Records, Vol. 2, pp. 174-175; TSN, Ma. Carina Javier, November 16, 1993, pp. 3-4.
- [26] Exhibit "J;" Original Records, Vol. 2, p. 178; TSN, Ma. Carina Javier, November 16, 1993, pp. 6-7.
- [27] TSN, Dr. Jose Bugayon, Jr., November 22, 1993, pp. 2-10.
- [28] TSN, Dr. Tedler Depaynos, November 23, 1993, pp. 3-5.
- [29] Exhibits "R" and "S;" Original Records, Vol. 2, pp. 183 and 186.
- [30] As evidenced by the Medico-Legal Certificate marked as Exhibit "MM;" Original Records, Volume 2, p. 205.
- [31] Exhibit "OO;" Original Records, Volume 2, pp. 212-219.
- [32] Rollo, pp. 62-63.
- [33] Id. at 93.
- [34] Id. at 93-96.
- [35] *People v. Mendoza*, 284 SCRA 705 (1998).
- [36] *People v. Dela Cruz*, G.R. No. 148730, June 26, 2003.
- [37] *People v. Napalit*, G.R. Nos. 142919 and 143876, February 4, 2003.
- [38] TSN, Nelson Nialla, August 17, 1994, pp. 12-15.
- [39] TSN, Ma. Carina Javier, November 16, 1993, pp. 5-8.

[40] TSN, Ma. Carina Javier, November 22, 1993, pp. 2-3.

[41] TSN, Domingo Santiago, December 6, 1994, pp. 5-6.

[42] TSN, Dr. Jose Bugayong, November 22, 1993, p. 5.

[43] TSN, Dr. Tedler Depaynos, November 23, 1993, p. 4.

[44] People v. Manuel Daniela and Jose Baylosis, G.R. No. 139230, April 24, 2003.

[45] People v. Pajotal, 368 SCRA 674 (2001).

[46] AN ACT AMENDING THE PROVISIONS OF PRESIDENTIAL DECREE NO. 1866, AS AMENDED, ENTITLED "CODIFYING THE LAWS ON ILLEGAL/UNLAWFUL POSSESSION, MANUFACTURE, DEALING IN, ACQUISITION OR DISPOSITION OF FIREARMS, AMMUNITION OR EXPLOSIVES OR INSTRUMENTS USED IN THE MANUFACTURE OF FIREARMS, AMMUNITION OR EXPLOSIVES, AND IMPOSING STIFFER PENALTIES FOR CERTAIN VIOLATIONS THEREOF, AND FOR RELEVANT PURPOSES" (Approved: June 6, 1997).

[47] Section 1, par. 2.

[48] People v. Pangilinan, et al., G.R. Nos. 134823-25, January 14, 2003.

[49] 340 SCRA 617 (2000).

[50] People v. Liberato and Julian Solamillo, G.R. No. 123161, June 18, 2003.

[51] People v. Daniela and Baylosis, G. R. No. 139230, April 24, 2003.

[52] Art. 2230. In criminal offenses, exemplary damages as a part of the civil liability may be imposed when the crime was committed with one or more aggravating circumstances. Such damages shall be separate and distinct from fines and shall be paid to the offended party.

[53] People v. Escote, G.R. No. 140756, April 4, 2003.

[54] Exhibit "OO."

[55] Exhibits "QQ," "RR" & "SS."

[56] Original Records, Vol. 2, p. 91.

[57] Living Expenses, in the absence of proof, is presumed to be half the gross annual income.

[58] People v. Escote and Acuyan, G.R. No. 140756, April 4, 2003.

[59] People v. Cabical, G.R. No. 148519, May 29, 2003.

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