



Republic of the Philippines
Supreme Court
Baguio City

FIRST DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff-Appellee,

G.R. No. 201449

Present:

SERENO, *CJ.*,
Chairperson,
LEONARDO-DE CASTRO,
BERSAMIN,
VILLARAMA, JR., and
REYES, *JJ.*

- versus -

WELVIN DIU y KOTSESA,
and DENNIS DAYAON y TUPIT,¹
Accused-Appellants.

Promulgated:

APR 03 2013

X ----- X

DECISION

LEONARDO-DE CASTRO, J.:

This is an appeal of the Decision² dated March 11, 2011 of the Court of Appeals in CA-G.R. CR.-H.C. No. 03785, affirming with modification the Decision³ dated December 23, 2008 of the Regional Trial Court (RTC) of Angeles City, Pampanga, Branch 59, in Criminal Case No. 03-668, which found accused-appellants Welvin Diu y Kotsesa (Diu) and Dennis Dayaon y Tupit (Dayaon) guilty beyond reasonable doubt of robbery with homicide.

¹ Three accused were charged before the Regional Trial Court (RTC), namely, Elvin Diu y Kotsesa (Diu), Dennis Dayaon y Tupit (Dayaon), and Cornelio de la Cruz, Jr., alias "Jay-Ar de la Cruz" (De la Cruz). However, only Diu and Dayaon were arrested, then arraigned, tried, and convicted by the RTC. De la Cruz remained at large. Hence, only Diu and Dayaon appealed their conviction before the Court of Appeals, and presently before this Court. Accordingly, De la Cruz's name was removed from the title as an accused-appellant.

² *Rollo*, pp. 2-23; penned by Associate Justice Fernanda Lampas Peralta with Associate Justices Priscilla J. Baltazar-Padilla and Jane Aurora C. Lantion, concurring.

³ *CA rollo*, pp. 72-81; penned by Presiding Judge Ma. Angelica T. Paras-Quiambao.

Accused-appellants, together with Cornelio de la Cruz, Jr., alias “Jay-Ar de la Cruz” (De la Cruz), were charged before the RTC on March 28, 2005 under the following Amended Information:

That on or about the 3rd day of October, 2003, in the City of Angeles, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and mutually aiding and abetting one another, armed with double bladed weapon, with intent of gain and by means of violence and intimidation against person, did and there willfully, unlawfully and feloniously take, steal and carry away from PERLIE SALVADOR y PALISOC, one (1) shoulder bag containing cash money amounting to ₱1,800.00, to the damage and prejudice of the said PERLIE SALVADOR, in the amount of ONE THOUSAND EIGHT HUNDRED PESOS (₱1,800.00), Philippine currency, and on the occasion of the said taking and stealing the said accused, did then and there willfully, unlawfully and feloniously with intent to rob, stab [the] other complainant NELY SALVADOR y PALISOC, with the use of the bladed weapon on the different parts of her body, and as a result thereof, sustained fatal wounds on the different parts of her body, which eventually caused her death.⁴

Only accused-appellants were arrested, while their co-accused De la Cruz remained at large.⁵

When arraigned on November 4, 2003, accused-appellants, duly assisted by counsel, pleaded not guilty.⁶

The prosecution presented as witnesses Perlie Salvador (Perlie),⁷ the surviving victim; and Police Inspector Medardo M. Manalo (P/Insp. Manalo),⁸ involved in the follow-up police operation that resulted in the arrest of accused-appellants.

Perlie testified that she and her sister Nely Salvador (Nely) were employed as waitresses at Halla Hotel in Angeles City. As the sisters were walking home from work along Colorado Street in Villasol Subdivision at around 10:30 in the evening of October 3, 2003, they saw accused-appellants and De la Cruz about two to three meters away. The three men were facing the wall, approximately one and one-half feet apart, urinating. As soon as the sisters passed by the three men, the latter accosted the former. Accused-appellant Diu embraced Perlie while accused-appellant Dayaon and De la Cruz held on to Nely. Perlie was able to break loose by elbowing accused-appellant Diu, but accused-appellant Diu grabbed Perlie’s bag, which contained her work uniform, personal effects, and ₱1,800.00 cash. Perlie ran away to ask for help from people nearby. Meanwhile, accused-appellant

⁴ Records, p. 1. The original Information charged only accused-appellants (records, p. 4). Pursuant to the Resolution/Recommendation dated March 28, 2005 of the Office of the City Prosecutor of Angeles City (records, p. 3), the Information was amended to include De la Cruz as an accused.

⁵ Id. at 10-12.

⁶ Id. at 24.

⁷ TSN, February 24, 2004; April 20, 2004; May 26, 2004; and July 21, 2004.

⁸ TSN, November 3, 2004.

Dayaon and De la Cruz were embracing Nely from behind. As she tried to go near Nely, Perlíe saw accused-appellant and De la Cruz stabbing Nely, passing a knife to each other. Perlíe described the knife as double bladed and approximately seven inches long. After the stabbing, Nely was left lying face down on the ground, covered in blood. The entire incident took place within two minutes. Two men then helped Perlíe bring Nely to the Ospital Ning Angeles, where Nely was pronounced dead on arrival. Perlíe recovered Nely's bag and upon checking its contents, she discovered that ₱50.00 was missing. Perlíe herself sustained wounds on her left elbow and left hip when she fell to the ground as she was trying to escape from accused-appellant Diu.

Perlíe asserted that Colorado Street was populated and well-lit. The light coming from the streetlamps was "like sun rays,"⁹ enabling Perlíe to see not only the profiles of accused-appellants and De la Cruz, but also their facial expressions. During the police investigation, Perlíe described accused-appellant Diu as "[having] a flat nose, somewhat ugly. *Medyo payat and maitim.*"¹⁰ Perlíe also claimed that accused-appellant Diu looked like he was going to kill her. Perlíe additionally observed that accused-appellants and De la Cruz, with their red eyes, appeared to be under the influence of drugs. In open court, Perlíe was able to identify accused-appellant Diu as the one who attacked her, and accused-appellant Dayaon as one of those who stabbed Nely.¹¹

The second prosecution witness, P/Insp. Manalo, was assigned at Police Station No. 5 from 2002 to May 10, 2004. On October 7, 2003, he was the commander-in-charge of intelligence, investigation, and operations of Police Kabayan Center (PKC) No. 51. While on duty, he witnessed police officers of PKC No. 52 questioning accused-appellant Diu regarding the homicide committed on October 3, 2003. He heard accused-appellant Diu name accused-appellant Dayaon, residing in *Daang Bakal*, Balibago, Angeles City, as the other suspect. Immediately, P/Insp. Manalo organized a raiding team. P/Insp. Manalo and the raiding team, with accused-appellant Diu, conducted an investigation at *Daang Bakal* from 10:00 to 11:00 in the morning. They suspected that accused-appellant Dayaon was staying at a house in a depressed area along the railroad track. They stayed about 30 meters away from the house, and waited for four to seven minutes until accused-appellant Dayaon stepped out. Accused-appellant Diu pointed to accused-appellant Dayaon, saying "That's him in the red t-shirt."¹² However, only after a few seconds, accused-appellant Dayaon stepped back inside the house. The raiding team rushed into the house. Since there was no other entrance or exit into the house except for the front door, accused-appellant Dayaon merely sat down on the floor and asked "why, what."¹³

⁹ TSN, February 24, 2004, p. 8.

¹⁰ Id. at 17.

¹¹ Id. at 12-18.

¹² TSN, November 3, 2004, p. 6.

¹³ Id.

Accused-appellant Diu again pointed to accused-appellant Dayaon as the other suspect in the homicide case.

The prosecution submitted as documentary evidence: (1) the Affidavit of Apprehension¹⁴ dated October 7, 2003 of the police officers who arrested accused-appellants; (2) the Custodial Investigation Report¹⁵ dated October 7, 2003 signed by Senior Police Officer (SPO) 4 Ernesto C. Silva; (3) Nely's Certificate of Death;¹⁶ (4) Perlie's Sworn Statement¹⁷ dated October 4, 2003 and Additional Sworn Statement¹⁸ dated October 7, 2003; and (5) the Medical Certificate¹⁹ dated January 27, 2004 executed by Dr. Rachell P. Gutierrez who attended to Nely at the hospital.

For the defense, accused-appellants Diu²⁰ and Dayaon²¹ themselves took the witness stand. They denied their culpability and participation in the incident, and mainly laid the blame on their co-accused De la Cruz, who remained at-large.

According to accused-appellant Diu, on the night of October 3, 2003, he and accused-appellant Dayaon were walking along Colorado Street *en route* from a carnival in Balibago, when they chanced upon their common friend, De la Cruz. The accused-appellants were walking behind two girls as they entered Colorado Street. De la Cruz suddenly approached and embraced the two girls. Accused-appellants, who were only about a meter away, took a step back in surprise. Accused-appellant Diu tried to help the girls but accused-appellant Dayaon stopped him, warning him that they might be implicated. The girls shouted, and one of them fell down bloodied. The other girl was left standing, and when De la Cruz was about to approach her, accused-appellant Diu ran to her, embraced her, and then pushed her away. The girl, who accused-appellant Diu identified as Perlie, fell to the ground because he pushed her hard, but Perlie was able to get up and run away. Accused-appellant Diu at first said that accused-appellant Dayaon tried to approach and hold De la Cruz, but later he stated that accused-appellant Dayaon likewise ran away.²² Accused-appellant remembered that De la Cruz was very angry and was about to advance towards him, but De la Cruz left the place at once when he heard other people coming. Accused-appellant Diu also left the scene to go home to Plaridel II.

Accused-appellant Diu admitted going to Manila right after the incident and returning to Plaridel II only two days later. Upon accused-appellant Diu's return, a certain Police Officer (PO) Paragas, together with

¹⁴ Records, pp. 31-32.

¹⁵ Id. at 33.

¹⁶ Id. at 34.

¹⁷ Id. at 35.

¹⁸ Id. at 36.

¹⁹ Id. at 37.

²⁰ TSN, January 19, 2006; March 30, 2006; May 25, 2006; and June 15, 2006.

²¹ TSN, November 16, 2006.

²² TSN, March 30, 2006, pp. 8-10.

three other men, went to see him at his auntie's house also in Plaridel II. PO Paragas said that a security guard saw accused-appellant Diu at the scene of the incident on October 3, 2003. Accused-appellant Diu admitted his presence on Colorado Street on October 3, 2003 and told PO Paragas everything he witnessed. PO Paragas and his three companions then brought accused-appellant Diu to the Friendship police station. At the police station, PO Paragas typed a one-page statement in *Tagalog*, which accused-appellant was unable to read or understand. The police next boarded accused-appellant Diu on a van and took him to Cuayan where he was detained for one day and one night. Thereafter, accused-appellant Diu was once more boarded on a van by PO Paragas and brought to Balibago. PO Paragas asked accused-appellant Diu to pinpoint accused-appellant Dayaon. Failing to find accused-appellant Dayaon in Balibago after a night of search, the police brought accused-appellant Diu to the police precinct at Cuayan. After a day, the police brought in accused-appellant Dayaon to join accused-appellant Diu at the same precinct. The police told both accused-appellants that "Anyway, [De la Cruz] is not here, we will lock you up instead."²³

As for accused-appellant Dayaon, he recounted that on the night of October 3, 2003, he and accused-appellant Diu went to a carnival and were on their way to accused-appellant Diu's house in Plaridel II. Accused-appellant Dayaon initially said that the carnival was very far from Colorado Street so he and accused-appellant Diu rode a jeep, but subsequently, he stated that they were walking along Colorado Street.²⁴ During his direct examination, accused-appellant Dayaon recalled that Colorado Street was very dark, having only one streetlight, so he did not see anyone else on the street. Accused-appellants then heard a woman scream.²⁵ Accused-appellant Diu noticed a commotion along Colorado Street, about 15 meters away from them. Accused-appellant Dayaon told accused-appellant Diu that they should just go back from where they came. Accused-appellant Diu, however, replied that accused-appellant Dayaon should just go home, and since accused-appellant Diu was going the same direction as the commotion, he would be the one taking care of it. Following accused-appellant Diu's advice, accused-appellant Dayaon went home at Checkpoint *riles*.

Accused-appellant Dayaon gave more details when he was cross-examined. He maintained that only accused-appellant Diu was previously acquainted with De la Cruz and he only came to know De la Cruz during his detention. He reported that on October 3, 2003, he and accused-appellant Diu saw De la Cruz about 15 meters away from them, walking towards the opposite direction on the other side of Colorado Street. Accused-appellant Diu commented that "Jay-Ar (De la Cruz)" was approaching. De la Cruz came near some people who were also walking, but because it was so dark, accused-appellant Dayaon could not even tell if the other people were girls.

²³ TSN, May 25, 2006, p. 6.

²⁴ TSN, June 15, 2006, pp. 7-8.

²⁵ TSN, June 16, 2006, p. 4.

Accused-appellants later heard women screaming.²⁶ Accused-appellant Dayaon insisted that he did not know anything else since he already went home. Police eventually picked him up to ask him some questions regarding the stabbing incident. While accused-appellant Dayaon was detained at Cuayan, accused-appellant Diu told him about De la Cruz and his reaction was, “so that is Jay-Ar. I do not know him.”²⁷

During re-direct examination, accused-appellant Dayaon recollected that relative to his and accused-appellant Diu’s position, the two girls were on the other side of the street but were nearer to them than De la Cruz. Accused-appellant Dayaon first said that the girls were walking towards the opposite direction, but later contradicted himself by saying that the girls were heading the same direction accused-appellants were going.²⁸

In addition, the defense called to the witness stand Eduardo Roxas Mekitpekit (Eduardo)²⁹ and Esther Mekitpekit (Esther).³⁰

Eduardo related that between 9:00 and 9:15 in the evening of October 3, 2003, he was on his way home from work on board a tricycle, when he saw De la Cruz standing at the corner of Colorado and New York Streets. De la Cruz was staying with his uncle who was his (Eduardo’s) neighbor, so De la Cruz was familiar. Eduardo asked De la Cruz what he was doing there when it was already evening and De la Cruz replied that he was waiting for somebody. Eduardo proceeded home in Plaridel II. The next day, October 4, 2003, his sister Ludy warned him against passing by Colorado Street because somebody got killed there. Yet, at 11:00 in the evening of the same day, Eduardo went to the apartment his family was renting on Colorado Street. He asked the security guard of the apartment about the stabbing incident and the security guard pointed to the place where it happened. Eduardo was terrified as it was the same place where he saw De la Cruz the night before. At around 6:00 in the morning of October 5, 2003, as he stepped out of their house in Plaridel II, Eduardo saw De la Cruz who likewise just awakened. Eduardo asked De la Cruz, “you were the one who did it?” and De la Cruz answered, “[y]es, I did it because the girl fought back.”³¹ Eduardo’s sister, Esther, who was standing just half a meter away, heard De la Cruz, and she got angry. Esther hit De la Cruz’s nape (*binatukan*) and said, “*babae ang inano ni’yo, hindi na kayo naawa.*”³² Eduardo claimed that he executed a statement at the Cuayan Police Station but it was not presented before the RTC.

Esther corroborated Eduardo’s testimony. She was outside their house in Plaridel cleaning fish when she heard De la Cruz admitting to

²⁶ Id. at 8-9.

²⁷ Id. at 12.

²⁸ TSN, June 15, 2006, pp. 12-13.

²⁹ TSN, February 8, 2007.

³⁰ TSN, May 3, 2007.

³¹ TSN, February 8, 2007, p. 7.

³² Id.

Eduardo that he stabbed the girl on Colorado Street. Esther hit De la Cruz's head and started to nag (“*nagbubunganga na ako*”), so De la Cruz immediately left.³³ When asked on cross-examination whether De la Cruz admitted that he was alone, it took Esther too long to answer, and when she finally did, she replied “[n]o sir.”³⁴

In its Decision dated December 23, 2008, the RTC found that Perlie's testimony was more credible; that Perlie's positive identification of accused-appellants, without showing of ill motive on her part, prevailed over accused-appellants' denial; and that there was conspiracy among accused-appellants and De la Cruz in the commission of the crime Robbery with Homicide. The RTC further determined that with the aggravating circumstance of nighttime present in this case, accused-appellants should be sentenced to death, but said sentence could not be imposed because of the enactment of Republic Act No. 9346. The RTC decreed in the end:

WHEREFORE, the Court finds accused WELVIN DIU y KOTSESA and DENNIS DAYAON y TUPIT guilty beyond reasonable doubt of the crime of Robbery with Homicide defined in Article 293 and penalized in paragraph 1, Article 294 of the Revised Penal Code, and hereby sentences each of them to suffer the penalty of reclusion perpetua; to jointly and severally pay the heirs of victim Nely P. Salvador the amount of Fifty thousand pesos (₱50,000.00) as civil indemnity; to jointly and severally pay the heirs of victim Nely P. Salvador and complainant [Perlie] P. Salvador the amount of Twenty thousand pesos (₱20,000.00) as exemplary damages; to pay complainant [Perlie] P. Salvador the amount of One thousand eight hundred pesos (₱1,800.00) for actual damages; and to pay the costs of suit in the amount of Three hundred pesos (₱300.00).³⁵

In an Order³⁶ dated February 6, 2009, the RTC gave due course to accused-appellants' Notice of Appeal and ordered the transmittal of the records of the case to the Court of Appeals.

The Court of Appeals rendered a Decision on March 11, 2011, affirming the judgment of conviction against accused-appellants. However, the appellate court did not appreciate the aggravating circumstance of nighttime because it was not alleged in the Information. It also modified the amounts of damages awarded. The dispositive portion of the Court of Appeals judgment reads:

WHEREFORE, the appealed Decision dated December 23, 2008 finding accused-appellants guilty of Robbery with Homicide is affirmed, subject to the modification that accused-appellants are ordered to pay the heirs of Nely Salvador moral damages in the amount of ₱50,000.00 and temperate damages of ₱25,000.00. Accused-appellants are also ordered to pay moral damages of ₱50,000.00 to [Perlie] Salvador. The award of exemplary damages to [Perlie] Salvador and the heirs of Nely Salvador is

³³ TSN, May 3, 2007, p. 7.

³⁴ Id. at 8.

³⁵ CA *rollo*, p. 81.

³⁶ Records, p. 300.

increased to ₱30,000.00 each. The Decision is affirmed in all other respects.³⁷

Insisting on their innocence, accused-appellants appealed before this Court.

Since both parties had manifested that they would no longer file supplemental briefs,³⁸ the Court considers the arguments the parties previously raised in their briefs before the Court of Appeals.

Accused-appellants raised a lone assignment of error, to wit:

THE TRIAL COURT GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANTS GUILTY OF THE CRIME CHARGED DESPITE THE PROSECUTION'S FAILURE TO PROVE THE SAME BEYOND REASONABLE DOUBT.³⁹

Accused-appellants contend that the RTC heavily relied on Perlie's testimony, the certainty and veracity of which on material points are highly questionable. Accused-appellants called attention to the following: (1) the crime happened late at night, so it was very dark, and Perlie could not have seen clearly the culprits' faces; (2) Perlie had not seen accused-appellants before so she could not have recognized them instantly; (3) it would have been impossible for Perlie to identify the exact knife used in Nely's stabbing, and she was only led on to believe that she was being presented with the very same knife by the police officers' suggestive remarks; (4) Perlie was merely informed by police officers that the men who assaulted her and Nely had been apprehended, but Perlie was not required to identify accused-appellants; (5) there is no proof, other than Perlie's own statements, that robbery took place and the original police investigation only focused on homicide; (6) accused-appellants were illegally arrested without warrants; and (7) except for the fact that accused-appellants were at the scene of the crime, there was no other positive and convincing evidence of conspiracy.⁴⁰ Hence, accused-appellants pray for their acquittal.

There is no merit in the instant appeal.

Essentially, accused-appellants assail the credibility of the prosecution's key witness, Perlie.

Worth reiterating herein is the ruling of the Court in *People v. Maxion*⁴¹ that:

³⁷ *Rollo*, p. 23.

³⁸ *Id.* at 36-39, 40-43.

³⁹ *CA rollo*, p. 56.

⁴⁰ Accused-appellants' argument that there was no aggravating circumstance of nighttime in this case was already sustained by the Court of Appeals.

⁴¹ 413 Phil. 740, 747-748 (2001).

[T]he issue raised by accused-appellant involves the credibility of witness, which is best addressed by the trial court, it being in a better position to decide such question, having heard the witness and observed his demeanor, conduct, and attitude under grueling examination. These are the most significant factors in evaluating the sincerity of witnesses and in unearthing the truth, especially in the face of conflicting testimonies. Through its observations during the entire proceedings, the trial court can be expected to determine, with reasonable discretion, whose testimony to accept and which witness to believe. Verily, findings of the trial court on such matters will not be disturbed on appeal unless some facts or circumstances of weight have been overlooked, misapprehended or misinterpreted so as to materially affect the disposition of the case. x x x (Citation omitted.)

Thus, it has been an established rule in appellate review that the trial court's factual findings – including its assessment of the credibility of the witnesses, the probative weight of their testimonies, and the conclusions drawn from the factual findings – are accorded great respect and even conclusive effect. These factual findings and conclusions assume greater weight if they are affirmed by the Court of Appeals.⁴²

In this case, the RTC, affirmed by the Court of Appeals, gave more weight and credence to the testimony of Perlíe compared to that of accused-appellants and their witnesses. There is no reason for the Court to overturn the judgment of the trial and the appellate courts on the matter.

Perlíe is more than just an eyewitness, she is a surviving victim of the crime. Her testimony, as described by the RTC, was “categorical and straightforward.”⁴³ Perlíe had positively identified both accused-appellants and described specifically the role each played, together with De la Cruz, in the commission of the crime. The physical injuries Perlíe and her sister Nely suffered were consistent with Perlíe's account of the events of October 3, 2003. In *People v. Pabillano*,⁴⁴ the Court similarly accorded credence and weight to the testimonies of the prosecution witnesses, especially the deceased victim's son, who gave an eyewitness account of the crime, ratiocinating as follows:

No reason or motive was adduced by appellants why any of the prosecution witnesses should falsely accuse them. Where there is no evidence to show that the principal witnesses for the State were actuated by ill-motive, their testimonies are entitled to full faith and credit. The natural interest of a witness who is a relative of the victim, (such as Jose Roño, III, the son of Jose Jr.) in securing the conviction of the guilty would deter him from implicating a person other than the true culprit. Jurisprudence recognizes that victims of criminal violence, such as Jose Roño, III himself, have a penchant for seeing the faces and features of their attackers and remembering them. We have no reason to disturb the trial court's finding that the testimonies of the prosecution witnesses are credible, and that their identification of the appellants as the perpetrators of the crime has been reliably established. (Citations omitted.)

⁴² *People v. Algarme*, G.R. No. 175978, February 12, 2009, 578 SCRA 601, 613.

⁴³ CA rollo, p. 79.

⁴⁴ 404 Phil. 43, 62 (2001).

The Court highlights that both accused-appellants admitted being present at the scene of the crime at the time it took place. Accused-appellant Diu even admitted before the RTC that he had physical contact with Perlie, only, he claimed that he embraced and pushed Perlie away to protect her from De la Cruz. It is highly suspicious though that after all his purported bravado and attempts to save Perlie, accused-appellant Diu merely walked away from the crime scene the night of October 3, 2003 and made no effort to report what happened to the police or inquire as to Perlie's condition. He even went to Manila for two days. Accused-appellant Dayaon's testimony is riddled with inconsistencies within itself and in comparison with accused-appellant Diu's, revealing the former's obvious attempt to minimize his involvement in what happened on Colorado Street the night of October 3, 2003. The testimonies of defense witnesses Eduardo and Esther hardly help accused-appellants' case. It is difficult to believe that De la Cruz would so readily and publicly admit to Eduardo that he killed a girl. Also significant is Esther's acknowledgment that De la Cruz made no statement that he committed the killing alone, thus, De la Cruz's admission to the commission of the crime did not necessarily exclude accused-appellants' participation therein.

As to the lighting condition along Colorado Street the night of October 3, 2003, the RTC and the Court of Appeals both believed Perlie's recollection that there were many streetlamps with light as bright as sun rays. In fact, it was bright enough that Perlie was able to see and describe not only the facial features of accused-appellants, but their facial expressions as well. In contrast, accused-appellant Dayaon's testimony that it was very dark and that there was only one streetlamp along Colorado Street the night of October 3, 2003, was inconsistent and unreliable. At first, accused-appellant Dayaon testified that it was so dark that he could not see anything at all; subsequently, he claimed that he saw De la Cruz from 15 meters away approaching people he could not see well enough to tell if they were girls; and even later, he stated that he saw the two girls walking on the other side of the street, as the girls were closer to his and accused-appellant Dayaon's position than De la Cruz.

The Court though agrees that, as the following quoted testimony will show, Perlie's identification of the knife purportedly used in the stabbing of her sister Nely is doubtful:

Q* You said these two persons were armed with a knife, will you please describe the knife?

A* It is this long and it is double bladed.

MS. GENEROSO: (Interpreter)

Witness demonstrated a length of about 7 inches.

PROS. HILARIO: (to witness)

Q* How were you able to identify that knife you were being embraced by the other person?

A* Because I saw it at the police station when the police was bringing it when the knife was recovered.

Q* That knife you saw at the police station what is your basis in telling us that the knife you have seen was the same knife used in stabbing your sister?

A* I asked the policeman and they said that “this is the knife that they used to your sister.”

Q* In your personal knowledge did you believe the police?

A* Yes, sir, because they gave the knife to the Prosecutor.

Q* That knife that you saw used by the two assailants against your sister as compared with the knife at the police station on that statement alone could you tell this Court that you are very sure that this is the very knife, it could have been another knife.

A* It looks exactly the same as the knife that was used on my sister.⁴⁵

Perlie’s certainty that the knife shown to her at the police station and during trial was the very same knife used in the stabbing of Nely was wholly dependent on the police officer’s representation to her that it was such. Nevertheless, failure of the prosecution to present the weapon used in Nely’s stabbing is not fatal to its case. Presentation of the knife used is not essential to prove homicide. The fact and manner of Nely’s death were duly established by evidence on record. Perlie saw accused-appellant Dayaon and De la Cruz embrace Nely, then stab Nely with a double-edged knife that was approximately seven inches long. Nely was declared dead on arrival at the hospital due to multiple stab wounds. As the Court had pronounced in *People v. Fernandez*⁴⁶:

Considering the evidence and the arguments presented by the appellant and appellee, the records show that the victim died from multiple stab wounds. This is consistent with Mrs. Bates’ declaration that she saw appellant stab Danilo several times at the dead end of an alley in Davila Street, Navotas. Her testimony is thus materially corroborated by the autopsy conducted on the deceased. It having been established that the victim died from multiple stab wounds, the failure of Mrs. Bates to identify or describe the weapon used is of no consequence and cannot diminish her credibility. For one, witnesses are not expected to remember every single detail of an incident with perfect or total recall. For another, what is vital in her testimony is not her knowledge of the weapon used, but that she saw appellant stabbing the victim. The presentation of the murder weapon is not indispensable to the prosecution of an accused. The non-identification or non-presentation of the weapon used is not fatal to the

⁴⁵ TSN, February 24, 2004, pp. 12-13.

⁴⁶ 434 Phil. 224, 231-232 (2002).

prosecution's cause where the accused was positively identified. (Citations omitted.)

It is irrelevant that the police was originally investigating only Nely's homicide. Nothing precludes the police, depending on the leads that they followed and evidence that they uncovered, from subsequently expanding its investigation to include the other crimes accused-appellants might have also committed. Furthermore, prosecutors have a wide range of discretion in determining whether, what, and whom to charge, the exercise of which depends on a smorgasbord of factors which are best appreciated by prosecutors.⁴⁷ In this case, the City Prosecutor of Angeles City, in a valid exercise of his discretion, and after evaluation of the evidence turned over by the police, resolved that there was probable cause to charge accused-appellants and De la Cruz with the crime of Robbery with Homicide, not merely homicide.

In *People v. De Jesus*,⁴⁸ the Court explained extensively the nature of the complex crime of Robbery with Homicide:

For the accused to be convicted of the said crime, the prosecution is burdened to prove the confluence of 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 *animo lucrandi*; and
- (4) by reason of the robbery or on the occasion thereof, homicide is committed.

In robbery with homicide, the original criminal design of the malefactor is to commit robbery, with homicide perpetrated on the occasion or by reason of the robbery. The intent to commit robbery must precede the taking of human life. The homicide may take place before, during or after the robbery. It is only the result obtained, without reference or distinction as to the circumstances, causes or modes or persons intervening in the commission of the crime that has to be taken into consideration. There is no such felony of robbery with homicide through reckless imprudence or simple negligence. The constitutive elements of the crime, namely, robbery and homicide, must be consummated.

It is immaterial that the death would supervene by mere accident; or that the victim of homicide is other than the victim of robbery, or that two or more persons are killed or that aside from the homicide, rape, intentional mutilation, or usurpation of authority, is committed by reason or on the occasion of the crime. Likewise immaterial is the fact that the victim of homicide is one of the robbers; the felony would still be robbery with homicide. Once a homicide is committed by or on the occasion of

⁴⁷ *Webb v. De Leon*, 317 Phil 758, 800 (1995).

⁴⁸ 473 Phil. 405, 426-428 (2004).

the robbery, the felony committed is robbery with homicide. All the felonies committed by reason of or on the occasion of the robbery are integrated into one and indivisible felony of robbery with homicide. The word “homicide” is used in its generic sense. Homicide, thus, includes murder, parricide, and infanticide.

Intent to rob is an internal act but may be inferred from proof of violent unlawful taking of personal property. When the fact of asportation has been established beyond reasonable doubt, conviction of the accused is justified even if the property subject of the robbery is not presented in court. After all, the property stolen may have been abandoned or thrown away and destroyed by the robber or recovered by the owner. The prosecution is not burdened to prove the actual value of the property stolen or amount stolen from the victim. Whether the robber knew the actual amount in the possession of the victim is of no moment because the motive for robbery can exist regardless of the exact amount or value involved.

When homicide is committed by reason or on the occasion of robbery, all those who took part as principals in the robbery would also be held liable as principals of the single and indivisible felony of robbery with homicide although they did not actually take part in the killing, unless it clearly appears that they endeavored to prevent the same.

If a robber tries to prevent the commission of homicide after the commission of the robbery, he is guilty only of robbery and not of robbery with homicide. All those who conspire to commit robbery with homicide are guilty as principals of such crime, although not all profited and gained from the robbery. One who joins a criminal conspiracy adopts the criminal designs of his co-conspirators and can no longer repudiate the conspiracy once it has materialized.

Homicide is said to have been committed by reason or on the occasion of robbery if, for instance, it was committed to (a) facilitate the robbery or the escape of the culprit; (b) to preserve the possession by the culprit of the loot; (c) to prevent discovery of the commission of the robbery; or, (d) to eliminate witnesses in the commission of the crime. As long as there is a nexus between the robbery and the homicide, the latter crime may be committed in a place other than the *situs* of the robbery. (Emphases supplied; citations omitted.)

Accused-appellants maintain that there was no sufficient proof that robbery took place, the only evidence of robbery submitted by the prosecution was Perlíe’s self-serving statement that accused-appellant Diu took her bag containing ₱1,800.00.

Once more, accused-appellants are challenging Perlíe’s credibility. Time and again, the Court has held that the testimony of a sole eyewitness is sufficient to support a conviction so long as it is clear, straightforward, and worthy of credence by the trial court,⁴⁹ as in the case of Perlíe’s testimony. The trustworthiness of Perlíe’s testimony is further bolstered by its

⁴⁹ *Lumanog v. People*, G.R. Nos. 182555, 185123, and 187745, September 7, 2010, 630 SCRA 42, 120.

consistency and details. In her Sworn Statement⁵⁰ executed on October 4, 2003, only a day after the incident, Perlíe already mentioned that she and her sister were victims of a “hold-up” and that her shoulder bag, containing ₱1,800.00 cash and her work uniform, was taken. On the witness stand, under oath, she retold how after embracing her, accused-appellant Diu grabbed her shoulder bag with the ₱1,800.00 cash, her work uniform, and her other personal belongings. The ₱1,800.00 cash was not some random amount that Perlíe conjured, but it was her salary from the hotel.⁵¹

Accused-appellants’ attempt at disputing the finding of conspiracy by both the RTC and the Court of Appeals is just as futile.

Based on Perlíe’s testimony, as she and Nely were walking along Colorado Street, accused-appellants and De la Cruz were all facing the wall, appearing to be urinating. When Perlíe and Nely had passed them by, accused-appellants and De la Cruz accosted them at the same time, with accused-appellant Diu embracing Perlíe and taking her bag, and accused-appellant Dayaon and De la Cruz holding on to Nely and stabbing her as she fought back. The actuations of accused-appellants and De la Cruz were clearly coordinated and complementary to one another. Spontaneous agreement or active cooperation by all perpetrators at the moment of the commission of the crime is sufficient to create joint criminal responsibility.⁵² As the RTC declared, “[t]he actions of the three accused, from the deprivation of the eyewitness [Perlíe] of her personal belongings by accused Diu to the stabbing of the victim Nely by accused Dayaon and De la Cruz, Jr., are clear and indubitable proofs of a concerted effort to deprive [Perlíe] and Nely of their personal belongings, and that by reason or on the occasion of the said robbery, stabbed and killed victim Nely Salvador.”⁵³ The absence of proof that accused-appellants attempted to stop Nely’s killing, plus the finding of conspiracy, make accused-appellants liable as principals for the crime of Robbery with Homicide.

Lastly, nothing on record shows that accused-appellants questioned the legality of their arrests prior to entering their pleas of “not guilty” during their arraignment. Hence, applicable herein is the following pronouncements of the Court in *Rebellion v. People*⁵⁴:

Petitioner’s claim that his warrantless arrest is illegal lacks merit. We note that nowhere in the records did we find any objection interposed by petitioner to the irregularity of his arrest prior to his arraignment. It has been consistently ruled that an accused is estopped from assailing any irregularity of his arrest if he fails to raise this issue or to move for the quashal of the information against him on this ground before arraignment. Any objection involving a warrant of arrest or the procedure by which the court acquired jurisdiction over the person of the accused must be made

⁵⁰ Records, p. 13.

⁵¹ TSN, February 24, 2004, p. 20.

⁵² *People v. Orias*, G.R. No. 186539, June 29, 2010, 622 SCRA 417, 434.

⁵³ CA *rollo*, p. 81.

⁵⁴ G.R. No. 175700, July 5, 2010, 623 SCRA 343, 348.

before he enters his plea; otherwise, the objection is deemed waived. In this case, petitioner was duly arraigned, entered a negative plea and actively participated during the trial. Thus, he is deemed to have waived any perceived defect in his arrest and effectively submitted himself to the jurisdiction of the court trying his case. At any rate, the illegal arrest of an accused is not sufficient cause for setting aside a valid judgment rendered upon a sufficient complaint after a trial free from error. It will not even negate the validity of the conviction of the accused. (Citations omitted.)

Indeed, in the more recent case of *People v. Trestiza*,⁵⁵ the Court pronounced that “[t]he fatal flaw of an invalid warrantless arrest becomes moot in view of a credible eyewitness account.”

The special complex crime of robbery with homicide is punishable under Article 294 of the Revised Penal Code, as amended, by *reclusion perpetua* to death. Article 63 of the same Code states that when the law prescribes a penalty consisting of two indivisible penalties, and the crime is neither attended by mitigating nor aggravating circumstances, the lesser penalty shall be imposed.⁵⁶ In the present case, the Court of Appeals correctly refused to consider the aggravating circumstance of night time since it was not alleged in the Information. In the absence of any aggravating or mitigating circumstance, the penalty of *reclusion perpetua* was appropriately imposed upon accused-appellants as principals in the crime of Robbery with Homicide.

The Court modifies the damages awarded to the victims, keeping in mind that the imposable penalty upon accused-appellants is *reclusion perpetua*, and not death which was merely lowered to *reclusion perpetua* pursuant to Republic Act No. 9346.

In line with recent jurisprudence,⁵⁷ accused-appellants are ordered to pay Nely’s heirs the amounts of ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages, and ₱25,000.00 as temperate damages. Accused-appellants are further ordered to pay Perlie ₱50,000.00 as moral damages and ₱1,800.00 as restitution for the cash taken from her. The award for exemplary damages is deleted in view of the absence of any aggravating circumstance.

WHEREFORE, the appeal is **DENIED**. The Decision dated March 11, 2011 of the Court of Appeals in CA-G.R. CR.-H.C. No. 03785 is **AFFIRMED**. Accused-appellants Welvin Diu y Kotsesa and Dennis Dayaon y Tupit are found **GUILTY** beyond reasonable doubt of the crime of Robbery with Homicide and are sentenced to suffer the penalty of *reclusion perpetua*. Accused-appellants Welvin Diu y Kotsesa and Dennis

⁵⁵ G.R. No. 193833, November 16, 2011, 660 SCRA 407, 444.

⁵⁶ *People v. Uy*, G.R. No. 174660, May 30, 2011, 649 SCRA 236, 260.

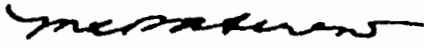
⁵⁷ *People v. Uy*, id.; *People v. Labagala*, G.R. No. 184603, August 2, 2010, 626 SCRA 267, 279; *People v. De Leon*, G.R. No. 179943, June 26, 2009, 591 SCRA 178, 202; *People v. Buduhan*, G.R. No. 178196, August 6, 2008, 561 SCRA 337, 367-368.

Dayaon y Tupit are further ordered to pay jointly and severally (a) the heirs of Nely P. Salvador the amounts of ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages, and ₱25,000.00 as temperate damages; and (b) Perlie P. Salvador ₱50,000.00 as moral damages and ₱1,800.00 as restitution for the cash taken from her, plus legal interest on all damages thus awarded at the legal rate of 6% per annum from the date of finality of this Decision.


SO ORDERED.


TERESITA J. LEONARDO-DE CASTRO
Associate Justice

WE CONCUR:


MARIA LOURDES P. A. SERENO
Chief Justice
Chairperson


LUCAS P. BERSAMIN
Associate Justice


MARTIN S. VILLARAMA, JR.
Associate Justice


BIENVENIDO L. REYES
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



MARIA LOURDES P. A. SERENO
Chief Justice