



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff-Appellee,

G.R. No. 198020

Present:

- versus -

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

JOSEPH BARRA,
Accused-Appellant.

Promulgated:..

JUL 10 2013

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D E C I S I O N

LEONARDO-DE CASTRO, J.:

Before this Court is an appeal of the February 11, 2011 **Decision**¹ of the Court of Appeals in CA-G.R. CR.-H.C. No. 04155² affirming with modification the August 24, 2009 **Decision**³ of the Regional Trial Court (RTC), Branch 30, San Jose, Camarines Sur in Crim. Case No. T-2678 and finding appellant Joseph⁴ Barra guilty beyond reasonable doubt of the crime of attempted robbery with homicide instead of special complex crime of robbery with homicide.

On March 21, 2004, an information⁵ for the special complex crime of robbery with homicide was filed against appellant, to wit:

That on or about 11:00 P.M. of October 9, 2003, at Barangay Tinawagan, Tigaon, Camarines Sur, and within the jurisdiction of this honorable court, the above-named accused, while armed with a firearm, after gaining entrance into the residence of his victim, with intent to gain,

¹ Rollo, pp. 2-12; penned by Associate Justice Priscilla J. Baltazar-Padilla with Associate Justices Fernanda Lampas Peralta and Elihu A. Ybanez, concurring.

² Entitled *People of the Philippines v. Joseph Barra y Doe*.

³ CA rollo, pp. 46-50; penned by Presiding Judge Noel D. Paulite.

⁴ Also referred to as JOSE in some parts of the *rollo*.

⁵ Records, p. 23.

by means of force and intimidation, did then and there willfully, unlawfully and feloniously take and steal money from Elmer Lagdaan y Azur; that on the occasion of the said robbery and for the purpose of enabling him to take and steal the money, the herein accused, with intent to kill, did then and there feloniously shoot said Elmer Lagdaan, thereby inflicting upon him gunshot wound which caused his death, to the prejudice of his heirs. (Emphases deleted.)

On arraignment, appellant pleaded not guilty.⁶ Trial ensued thereafter.

Dr. Peñafrancia N. Villanueva, Municipal Health Officer of Tigaon, Camarines Sur, examined the corpse of Elmer Lagdaan and stated in her Postmortem Report⁷:

Findings:

1. Gunshot wound, point of entry, 0.5 x 0.5 cms, circular, with inverted edges at the mid left frontal area. Hematoma formation is noted at the site of entry.

CAUSE OF DEATH:

MASSIVE HE[M]ORRHAGE SECONDARY [TO] GUNSHOT WOUND

Dr. Villanueva testified that the victim sustained a gunshot wound due to the circular and inverted edges of the point of entry. She concluded that since there was no point of exit, the victim was shot at close range.⁸

Ricardo de la Peña testified that he knew appellant for a long time. He stated that he was on his way home to the neighboring *barangay*, when, at around 9:00 p.m. on October 9, 2003, in the light of a bright moon, he saw appellant enter the house of Lagdaan, which was lit with a lamp, and poked a gun to the victim's right forehead and demanded money. De la Peña hid behind a tree ten meters away. When the victim stated that the money was not in his possession, appellant shot him. He went home and reported the incident the following morning.⁹

Ely Asor testified that on the night of October 9, 2003, he was on his way to the victim's house to collect his daily wage when he saw appellant in the yard of the victim's house. He inquired from appellant if the victim was around. Appellant responded that the victim was not around. Asor went home. It was while Asor was in his house that he heard a gunshot. It was the following morning that he learned that the victim died. Asor then proceeded to report the incident.¹⁰

⁶ Id. at 27.

⁷ Id. at 43.

⁸ TSN, January 17, 2005, p. 3.

⁹ TSN, May 16, 2005, pp. 3-8.

¹⁰ TSN, August 1, 2005, pp. 2-4.

The victim's mother, Flora Lagdaan, testified that she spent for funeral and burial expenses in the amount of ₱33,300.00.

In his defense, appellant denied the charges against him. Appellant claimed that he was in Batangas City, with his brother Benjamin, visiting his sister when he was arrested and brought to Camarines Sur and charged with the crime of "robbery with murder."¹¹ Appellant's brother, Benjamin, tried to corroborate his testimony.¹²

The RTC, after taking into consideration all the evidence presented, found appellant guilty beyond reasonable doubt of the crime of robbery with homicide. It stated that the affirmative testimony of the prosecution's witnesses deserved more weight than the appellant's defense of denial and alibi. Thus, finding the prosecution's witnesses to be credible and that the killing of the victim to be by reason of the robbery, the RTC decision's decretal portion read:

WHEREFORE, in view of the foregoing, judgment is hereby rendered finding the accused, Joseph Barra GUILTY beyond reasonable doubt of the crime of Robbery with Homicide as defined and penalized under Article 291(1) of the Revised Penal Code, and sentences him to suffer the penalty of RECLUSION PERPETUA. To pay the surviving heirs of Elmer Lagdaan, the sum of Php50,000.00 as civil indemnity for his death, as actual damages in the amount of Php55,579.80, as moral damages in the sum of Php50,000.00 and to pay the costs.

The accused is entitled to the full credit of his preventive imprisonment if he abides by the disciplinary rules imposed upon convicted prisoners during his confinement, otherwise he shall only be entitled to four-fifths (4/5) thereof.¹³

However, on appeal, the Court of Appeals only found appellant guilty of attempted robbery with homicide. It stated that:

Regarding the trial court's finding that accused-appellant is responsible for the death of Lagdaan, WE will not disturb the same as it is well supported by the evidence on record and in accord with prevailing law and jurisprudence. However, WE disagree with its determination of the nature of the crime that accused-appellant committed. Instead of robbery with homicide at its consummated stage, accused-appellant should have been declared guilty only of attempted robbery with homicide.

As correctly observed by the OSG,¹⁴ the only evidence introduced by the government to establish robbery is the statement of De la Peña that when accused-appellant reached the victim's place, the latter barged into the said residence, poked a gun at the victim's forehead, demanded money and when the victim refused to accede to his demand, fired a gun and shot

¹¹ TSN, June 22, 2007, pp. 4-5.

¹² TSN, August 19, 2008, pp. 9-10.

¹³ CA *rollo*, p. 50.

¹⁴ Office of the Solicitor General.

the victim. Indeed, no iota of evidence was presented to establish that accused-appellant took away the victim's money or any property, for that matter.

The fact of asportation must be established beyond reasonable doubt. Since this fact was not duly established, accused-appellant should be held liable only for the crime of attempted robbery with homicide as defined and penalized under Article 297 of the Revised Penal Code which provides –

“When by reason of or on occasion of an attempted or frustrated robbery a homicide is committed, the person guilty of such offenses shall be punished by *reclusion temporal* in its maximum period to *reclusion perpetua*, unless the homicide committed shall deserve a higher penalty under the provisions of this Code.”

The appellant is guilty of attempted robbery with homicide only when he commenced the commission of robbery directly by overt acts and did not perform all the acts of execution which would produce robbery by reason of some causes or accident other than his own spontaneous desistance.

The claim of the defense that accused-appellant should be convicted only of the crime of homicide is bereft of merit. The killing of the victim herein was by reason of or on the occasion of robbery.

The attendant circumstances clearly show accused-appellant's intent to rob the victim. That motive was manifested by accused-appellant's overt act of poking a gun at the victim's forehead demanding money from the latter. When the victim refused to accede to the demand, accused-appellant shot the former. The killing was an offshoot of accused-appellant's intent to rob the victim. Accused-appellant was bent on resorting to violent means to attain his end. Due to the victim's failure to give his money, the crime of robbery was, however, not consummated.¹⁵ (Citations omitted.)

Thus, the Court of Appeals stated:

WHEREFORE, the foregoing considered, the assailed Judgment is hereby **MODIFIED** as follows -

- 1) Accused-appellant is adjudged GUILTY of the crime of Attempted Robbery with Homicide and is hereby sentenced to suffer the penalty of RECLUSION PERPETUA,
- 2) Accused-appellant is directed to pay the heirs of Elmer Lagdaan the following:
 - a) the amount of ₱50,000.00 as civil indemnity;
 - b) the amount of ₱50,000.00 as moral damages;
 - c) the amount of ₱25,000.00 as temperate damages;

¹⁵

Rollo, pp. 9-10.

- d) the amount of ₱25,000.00 as exemplary damages; and
- e) the cost of suit.¹⁶

Appellant filed his notice of appeal on February 18, 2011.¹⁷

After appellant's confinement was confirmed, both the OSG and appellant manifested that they would adopt the pleadings filed in the Court of Appeals in lieu of supplemental briefs.¹⁸

Appellant argues that his identity as the perpetrator of the crime was not sufficiently established by the prosecution. Appellant stated that the testimonies of the prosecution's witnesses were rife with inconsistencies. Moreover, appellant argued that the elements for the special complex crime of robbery with homicide were not proven particularly the element of taking of personal property.

We affirm the February 11, 2011 decision of the Court of Appeals with modification on the award of damages.

In *People v. Bocalan and Gatdula*¹⁹ we stated that:

[F]indings of facts of the trial court, its calibration and assessment of the probative weight of the testimonial evidence of the parties and its conclusions anchored on its findings are accorded by the appellate court high respect, if not conclusive effect, because of the unique advantage of the trial court in observing at close range the demeanor, conduct and deportment of the said witnesses as they testify, unless the trial court ignored, misunderstood and misinterpreted cogent facts and circumstances which if considered will change the outcome of the case. x x x. (Citation omitted.)

In the present case, while appellant questions the credibility of the prosecution's witnesses, he does not present any sufficient evidence to prove that the RTC indeed ignored, misunderstood and misinterpreted the facts and circumstances of the case. We also found, after reviewing the records, nothing that would indicate any misinterpretation or misapprehension of facts on the part of the appellate court that would substantially alter its conclusions.

Appellant in this case was charged with robbery with homicide under Article 294 of the Revised Penal Code, which provides:

Art. 294. *Robbery with violence against or intimidation of persons*
– *Penalties.* – Any person guilty of robbery with the use of violence

¹⁶ Id. at 11-12.

¹⁷ Id. at 13-15.

¹⁸ Id. at 20-24 and 31-33.

¹⁹ 457 Phil. 472, 481 (2003).

against or intimidation of any person shall suffer:

1. The penalty of from *reclusion perpetua* to death, when by reason or on occasion of the robbery, the crime of homicide shall have been committed; or when the robbery shall have been accompanied by rape or intentional mutilation or arson.

In *People v. Quemeggen*,²⁰ this Court gave the requisites to be proven by the prosecution for appellant to be convicted of robbery with homicide, to wit:

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. (Citation omitted.)

In the case before us, appellant's intention was to extort money from the victim. By reason of the victim's refusal to give up his personal property - his money - to appellant, the victim was shot in the head, causing his death. We, however, agree with the Court of Appeals that the element of taking was not complete, making the crime one of attempted robbery with homicide as opposed to the crime appellant was convicted in the RTC. Appellant is, therefore, liable under Article 297 of the Revised Penal Code, not under Article 294 as originally held by the RTC. Article 297 of the Revised Penal Code states:

Article 297. *Attempted and frustrated robbery committed under certain circumstances.* — When by reason or on occasion of an attempted or frustrated robbery a homicide is committed, the person guilty of such offenses shall be punished by *reclusion temporal* in its maximum period to *reclusion perpetua*, unless the homicide committed shall deserve a higher penalty under the provisions of this Code.

The elements to be convicted under Article 297 were discussed in *People v. Macabales*,²¹ to wit:

The elements of Robbery with Homicide as defined in Art. 297 of the Revised Penal Code are: (1) There is an attempted or frustrated robbery. (2) A homicide is committed.

In the present case, the crime of robbery remained unconsummated because the victim refused to give his money to appellant and no personal property was shown to have been taken. It was for this reason that the victim was shot. Appellant can only be found guilty of attempted robbery

²⁰ G.R. No. 178205, July 27, 2009, 594 SCRA 94, 103.

²¹ 400 Phil. 1221, 1235-1236 (2000).

with homicide, thus punishable under Article 297 of the Revised Penal Code. Since the RTC and the Court of Appeals found appellant's crime to be aggravated by disregard of dwelling, the Court of Appeals correctly imposed the maximum penalty of *reclusion perpetua*.

Anent the awards of damages by the Court of Appeals, after a careful review of existing rules and recent jurisprudence, we find the same to be in order and need not be disturbed.²²

However, in conformity with current policy, we impose on all the monetary awards for damages interest at the legal rate of 6% per annum from date of finality of this Decision until fully paid.²³


WHEREFORE, the February 11, 2011 Decision of the Court of Appeals in CA-G.R. CR.-H.C. No. 04155 is **AFFIRMED with MODIFICATION** that the amount of exemplary damages shall be increased to ₱30,000.00 and all monetary awards for damages shall earn interest at the legal rate of 6% per annum from date of finality of this Decision until fully paid.

No pronouncement as to costs.

SO ORDERED.

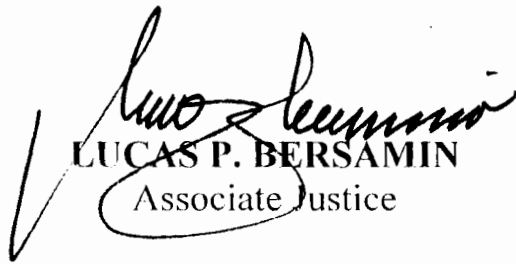

TERESITA J. LEONARDO-DE CASTRO
Associate Justice

WE CONCUR:

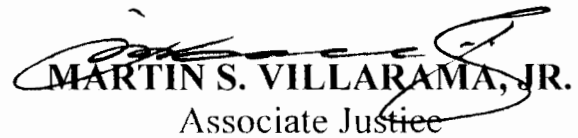

MARIA LOURDES P. A. SERENO
Chief Justice
Chairperson

²² See *People v. Esoy*, G.R. No. 185849, April 7, 2010, 617 SCRA 552, 566.

²³ *People v. Deligero*, G.R. No. 189280, April 17, 2013.



LUCAS P. BERSAMIN
Associate Justice



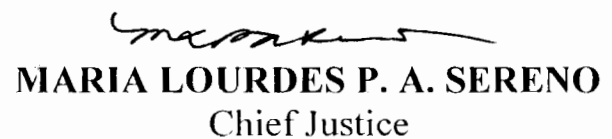
MARTIN S. VILLARAMA, JR.
Associate Justice



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