



Republic of the Philippines
Supreme Court
 Manila

SUPREME COURT OF THE PHILIPPINES
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FIRST DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff-Appellee,

G.R. No. 215332

Present:

- versus -

SERENO, C.J., Chairperson,
 LEONARDO-DE CASTRO,
 DEL CASTILLO,
 PERLAS-BERNABE, and
 CAGUIOA, JJ.

MARK GAMBA y NISSORADA,
Accused-Appellant.

Promulgated:

JUL 24 2017

X ----- X

RESOLUTION

DEL CASTILLO, J.:

On appeal is the June 19, 2014 Decision¹ of the Court of Appeals (CA) in CA-G.R. CR HC No. 05198 which affirmed with modification the July 29, 2011 Decision² of the Regional Trial Court (RTC) of Manila, Branch 41, finding appellant Mark Gamba y Nissorada guilty of robbery with homicide.

The facts are as follows:

Appellant was charged with the special complex crime of robbery with homicide.³ When arraigned, he pleaded "not guilty". *[Signature]*

¹ CA rollo, pp. 134-145; penned by Associate Justice Ricardo R. Rosario and concurred in by Associate Justices Amelita G. Tolentino and Leoncia Real-Dimagiba.

² Records, pp. 367-382; penned by Presiding Judge Rosalyn D. Mislos-Loja.

³ The accusatory portion of the Information reads as follows:

That on or about June 2, 2006, in the City of Manila, Philippines, the said accused, conspiring and confederating with others whose true names, real identities and present whereabouts are still unknown and helping one another, with intent to gain and by means of force, violence and intimidation to wit: by then and there pretending to be passengers of a jeepney plying along Tejeron corner Paco Roman Street, Sta. Ana, Manila, this City, announcing a [holdup] and at gunpoint divested from, among others, ESTEBAN SANDAGAN y TAMPOS his ring, silver necklace and cash in the amount of ₱1,100.00, did then and there willfully and feloniously take, rob and carry away the same belonging to said Esteban Sandagan y Tampos against his will, to the damage and prejudice of the said owner in the amount of more than ₱1,100.00, Philippine Currency; that by reason of and on the occasion of said robbery, the said accused, with intent to kill, kicked JOHN MARK CERBITO y BOLISAY out of the said jeepney and shot him twice on the trunk with a gun

During trial, the prosecution adduced evidence showing that at around 1:00 a.m. of June 2, 2006, appellant and three unidentified men boarded a public utility jeepney. When the vehicle was traversing along Tejeron corner Paco Roman Streets, Sta. Ana, Manila, they announced a "hold-up". Appellant and one of his companions pulled out their guns and divested Esteban Sandagan y Tampos (Sandagan) of his cash and possessions in the amount of ₱1,100.00. John Mark Cerbito (Cerbito), the passenger who was seated beside the driver, refused to give his cellphone, hence appellant kicked him three to four times. As a result, Cerbito fell off the jeepney whereupon appellant shot him twice, hitting him in his chest and abdomen. Thereafter, appellant and his three companions ran away with their loot. Cerbito died due to his gunshot wounds.

Two days later, police officers brought Sandagan to a hospital where he saw appellant, who was gunned down in the course of another robbery incident. Sandagan duly identified appellant as likewise the perpetrator of the June 2, 2006 robbery-homicide. Thus, appellant was arrested.

Appellant denied the charges against him. He claimed to have been engaged in a drinking session with a friend in a *videoke* bar and restaurant at the corner of Callejon and Tejeron Streets, Sta. Ana, Manila during the June 2, 2006 robbery-homicide incident.

Ruling of the Regional Trial Court

In its Decision dated July 29, 2011, the RTC found appellant guilty beyond reasonable doubt of the complex crime of robbery with homicide. It found the testimony of Sandagan sufficient to prove that appellant and his three companions conspired in divesting him at gunpoint of his cash and personal belongings, and in shooting Cerbito to death. The RTC gave full credence to the testimony of Sandagan since he saw appellant and his companions at close range during the incident. In addition, the jeepney, as well as the crime scene, was well-lighted. The RTC ruled that the positive identification of appellant and his companions as the perpetrators of the crime prevails over his defenses of denial and alibi. Moreover, the RTC noted no improper motive on the part of Sandagan to testify falsely against appellant or to accuse him of committing a heinous crime. The RTC thus sentenced appellant to suffer the penalty of *reclusion perpetua*, to pay the amount of ₱10,000.00 to Sandagan as moral damages, and the amounts of ₱25,000.00 as moral damages, ₱10,000.00 as exemplary damages, ₱66,047.10 as actual damages, and ₱75,000.00 as civil indemnity to the heirs of Cerbito.



Ruling of the Court of Appeals


In the assailed Decision dated June 19, 2014, the CA ruled that the prosecution successfully established all the elements of the crime of robbery with homicide. It brushed aside appellant's argument that his identification in the hospital created prejudice in Sandagan's mind since he was the only person presented by the police. The CA held that the unwavering testimonies of the prosecution witnesses convincingly proved that said identification was not manipulated by the police. The CA therefore affirmed the penalty of *reclusion perpetua* imposed by the RTC on appellant but with modification as to the awards of damages. As modified, the award of moral damages to the heirs of Cerbito and to Sandagan was increased to ₱50,000.00 each. In addition, appellant was ordered to pay Sandagan temperate damages in the amount of ₱3,000.00. The awards of exemplary damages in the amount of ₱10,000.00; actual damages of ₱66,047.10; and civil indemnity of ₱75,000.00 to the heirs of Cerbito were retained.

Hence, this appeal.

Our Ruling

The appeal lacks merit.

The elements of the special complex crime of robbery with homicide are: "(1) the taking of personal property belonging to another; (2) with intent to gain; (3) with the use of violence or intimidation against a person; (4) on the occasion or by reason of the robbery, the crime of homicide, as used in its generic sense, was committed. x x x The robbery is the [main] purpose and objective of the malefactor and the killing is merely incidental to the robbery. The intent to rob must precede the taking of human life but the killing may occur before, during or after the robbery."⁴ The prosecution successfully established these elements. Appellant, together with his three companions, boarded the public utility jeepney and declared a "hold-up". The passengers, including Sandagan, were forced at gunpoint to turnover their cash and possessions. When Cerbito refused to be divested of his cellphone, appellant kicked him three or four times with such force that he fell off the jeepney. Still dissatisfied with the violence he vented on Cerbito, appellant fired at him twice, hitting him in his chest and abdomen resulting in his untimely death. Appellant and his three cohorts then fled together with their loot. Undoubtedly, their main objective was to rob the passengers of the jeepney; the fatal shooting of Cerbito was merely incidental, resulting by reason of or on the occasion of the robbery. Appellant therefore committed the crime of robbery with homicide as charged in the Information.



⁴ *People v. Baron*, 635 Phil. 608, 617 (2010).

Against the prosecution's evidence, appellant's defenses of denial and alibi are worthless. These are the weakest defenses and are easy to concoct and difficult to disprove. Besides, appellant's alibi that he was in a *videoke* bar during the commission of the crime was not substantiated by evidence. Appellant also failed to prove that it was physically impossible for him to have been at the scene of the crime when it occurred.

All told, the appeal must be denied. Appellant's conviction for the complex crime of robbery with homicide was indeed proved beyond reasonable doubt. The imposition of the penalty of *reclusion perpetua* was therefore warranted. The award of actual damages in the amount of ₱66,047.10 to the heirs of Cerbito is proper. However, the awards of civil indemnity, moral damages and exemplary damages for his death must be increased to ₱75,000.00 each in line with prevailing jurisprudence.⁵ As regards Sandagan, the award of ₱50,000.00 as moral damages must be deleted since this kind of damages can only be given when the criminal offense results in physical injuries.⁶ In this case, Sandagan did not suffer any physical injury from the robbery. As regards the award of ₱3,000.00 as temperate damages, the same must be reduced to ₱1,100.00, which is equivalent to the amount of the belongings divested from Sandagan. Finally, legal interest of 6% *per annum* must be imposed on all the monetary awards, from the date of finality of the Resolution until fully paid.

WHEREFORE, the appeal is **DISMISSED**. The assailed June 19, 2014 Decision of the Court of Appeals in CA-G.R. CR HC No. 05198 finding appellant Mark Gamba y Nissorada guilty beyond reasonable doubt of robbery with homicide and sentencing him to suffer the penalty of *reclusion perpetua*, is **AFFIRMED** with the **MODIFICATIONS** that the awards of moral damages and exemplary damages to the heirs of John Mark Cerbito y Bolisay are increased to ₱75,000.00 each; the award of moral damages to Esteban Sandagan y Bolisay is deleted while the award of temperate damages is reduced to ₱1,100.00. All damages awarded shall earn interest at the rate of 6% *per annum* from date of finality of this Resolution until full payment.

SO ORDERED.


MARIANO C. DEL CASTILLO
Associate Justice

⁵ *People v. Jugueta*, G.R. No. 202124, April 5, 2016, 788 SCRA 331.


⁶ Article 2219 of the Civil Code reads:

Art. 2219 – Moral damage may be recovered in the following and analogous cases:

(1) A criminal offense resulting in physical injuries;

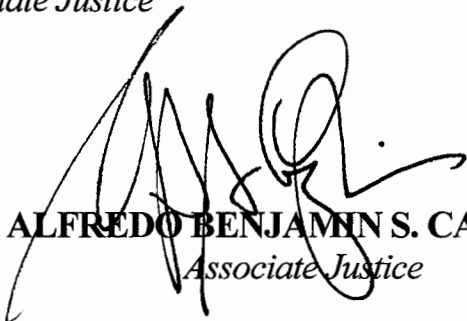
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WE CONCUR:


MARIA LOURDES P. A. SERENO
Chief Justice
Chairperson



TERESITA J. LEONARDO-DE CASTRO
Associate Justice


ESTELA M. PERLAS-BERNABE
Associate Justice


ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Resolution 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

