REPUBLIC OF THE PHILIPPINES  
SUPREME COURT  
Manila

## SECOND DIVISION

## NOTICE

Sirs/Mesdames:

Please take notice that the Court, Second Division, issued a Resolution dated **27 November 2019** which reads as follows:

“G.R. No. 233830 (*People of the Philippines v. Dennis A. Perez and Marvin A. Montero*). – Considering the allegations, issues, and arguments presented in the Accused-Appellants’ and the Plaintiff-Appellee’s Briefs,<sup>1</sup> which the parties adopted instead of filing their respective Supplementary Briefs, the Court resolves to **DISMISS** the appeal for failure of Dennis A. Perez (Perez) and Marvin A. Montero (Montero; collectively, appellants) to sufficiently show any reversible error in the Decision<sup>2</sup> dated April 20, 2017 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 06889, as to warrant the exercise of the Court’s appellate jurisdiction.

The factual findings of the trial court, as affirmed by the CA, are entitled to respect and are not disturbed on appeal unless some facts or circumstances of weight and substance were overlooked and misappreciated, and could materially affect the disposition of the case. Such conclusiveness is derived from the trial court’s having the first-hand opportunity to observe the demeanor and manner of the witnesses when they testified at the trial.<sup>3</sup>

In this case, the Court finds that the trial court and the CA committed no error in convicting the appellants of Robbery with Homicide. Article 294, paragraph (1) of the Revised Penal Code, as amended by Republic Act No. 7659, states:

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

<sup>1</sup> CA rollo, pp. 107-127 and 154-168, respectively.

<sup>2</sup> Rollo, pp. 2-16; penned by Associate Justice Normandie B. Pizarro with Associate Justices Samuel H. Gaerlan and Jhosep Y. Lopez, concurring.

<sup>3</sup> *People v. Rollen*, G.R. No. 231128, February 13, 2019.

1. The penalty of *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.

There is robbery with homicide when a homicide is committed by reason of or on occasion of a robbery. In order to sustain a conviction for robbery with homicide, the following elements must be proven by the prosecution, to wit: (1) the taking of personal property belonging to another; (2) the intent to gain or *animus lucrandi*; (3) the use of violence or intimidation against a person; and (4) that on the occasion or by reason of the robbery, the crime of homicide, as used in its generic sense, was committed. A conviction requires certitude that 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.<sup>4</sup> Elucidating on the nature of the crime of robbery with homicide, the Court said:

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 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.

<sup>4</sup> *People v. Villamor*, G.R. No. 202705, January 13, 2016.

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.<sup>5</sup> (Emphasis supplied.)

Here, there is no doubt that the abovementioned elements are present. The candid testimony of Joel G. Oarga (Oarga), who positively identified the appellants as the perpetrators of the crime, revealed that they chased the victim's motorcycle, cut into his path which caused him to stop, shot him and then took something from him when he was lying on the ground. Oarga recalled:

PROS. SASONDONCILLO:

Q: Mr. Witness[,] what was that event that happened along Lagumbay Road near a bridge while you were going home at around 10:30 in the morning of December 21, 2004?

A: When I was about to go home[,] there was an unusual incident [that] happened, I saw 2 motorcycles going to the direction of [the] National Highway[,] Sir.<sup>6</sup>

x x x x

<sup>5</sup> *People v. Palema, et al.*, G.R. No. 228000, July 10, 2019 citing *People v. De Jesus*, 473 Phil. 405 (2004).

<sup>6</sup> TSN, September 27, 2006, pp. 7-8.

- Q: What did you notice of the two (2) motorcycles?  
A: I came to know that one of the motorcycle[s] belongs to a collector of Philacor by the name of Rolando (*sic*) Napiza.
- Q: And how about the other motorcycle?  
A: The other motorcycle I do not know[,] Sir.
- Q: Can you remember the color and the brand of [the] motorcycle?  
A: I cannot recall the brand[,]only the color[,] Sir.
- Q: How about the color of the motorcycle of Ronaldo Napiza?  
A: Color white[,]Sir.
- Q: How about the other motorcycle[,] what is the color?  
A: The other one is clor (*sic*) blue[,] Sir.<sup>7</sup>

x x x x

- Q: And what happened[,] Mr. Witness[,] when you saw those two (2) motorcycles coming at the opposite direction while you were walking along Lagumbay Road?  
A: What I saw from that distance, the white color motorcycle going ahead [of] the blue one and suddenly the blue motorcycle cut the white motorcycle driven by the Philacor collector.
- Q: And that incident Mr. Witness happened right before your eyes, is that what you mean? In front of you?  
A: A little bit far, Sir.<sup>8</sup>

x x x x

- Q: What happened[,] Mr. Witness[,] after the white motorcycle was cut by the blue motorcycle in tandem?  
A: I suddenly heard one shot[,] Sir.
- Q: When you heard that gunshot[,] what happened next?  
A: I went to a small bridge connecting that Lagumbay road and I peep (*sic*) thru it and I heard again another gunshot[,] Sir.
- Q: Why did you go underneath the bridge?  
A: To protect myself[,] Sir.
- Q: After you heard the gunshot, the second gunshot[,] what happened next?

<sup>7</sup> *Id.* at 8-9.

<sup>8</sup> *Id.* at 11.

- A: The other man onboard (*sic*) the motorcycle, the backrider of the motorcycle alighted and looked at the person they shot and kicked the said person to determine whether he was still alive[,] Sir.
- Q: Do you recall the wearings of these two persons in tandem in a blue motorcycle?
- A: Yes[,] Sir.
- Q: Please tell the court their wearings and physical appearance at that time?
- A: At that time[,] the two (2) persons were wearing a bon[n]et wherein their faces were covered.
- Q: How about their wearing or apparel?
- A: They were wearing jeans[,] Sir.
- Q: Mr. Witness[,] you said that you peep (*sic*), after hiding underneath that bridge you peep (*sic*) and in the process you heard a second gunshot, what did you see[,] Mr. Witness?
- A: When I heard the second gunshot and when I peep (*sic*), I saw somebody alighted from the motorcycle, I saw the one who shot the victim checked (*sic*) that person if he was still alive or not and when they confirmed that he was already dead[,] I saw that person picked (*sic*) something from that collector who was being (*sic*) shot and rideback (*sic*) at the motorcycle[,] Sir.<sup>9</sup>
- x x x x
- Q: After that backrider who shot for the second time the collector of Philacor who was (*sic*) already fell on the ground, what happened next?
- A: After the incident[,] the man who picked something from the victim boarded the motorcycle and left the place going to the National Highway and removed their bon[n]ets[,] Sir.
- Q: You mean to say[,] Mr. Witness[,] both accused removed their bon[n]et on their head?
- A: Yes[,] Sir.
- Q: And after they removed their bon[n]et what happened next?
- A: They passed by at the place where I was hiding and thereafter I peep (*sic*) and I saw their identities[,] Sir.<sup>10</sup>

x x x x

<sup>9</sup> *Id.* at 12-14.

<sup>10</sup> *Id.* at 15.

Q: And Mr. Witness do you have a chance to see these two accused face to face after that incident of December 21, 2004 when Ronaldo Castillo[,] the victim[,] was robbed and killed?

A: Yes[,] Sir.

Q: When was that?

A: When [a] similar incident wherein two persons were arrested[,] I was informed by PO3 Benjamin Tapeño and we proceeded to the Municipal Police Station of Santa Cruz, Laguna[,] Sir.<sup>11</sup>

x x x x

Q: And was there a line up?

A: Yes Sir, there was.

Q: What happened at the line up of suspects?

A: I was asked whether I can identify the two robbers involved in that incident happened (*sic*) wherein the collector was robbed and killed[,] Sir. And I even identify those persons.<sup>12</sup>

x x x x

Q: Now[,] after you have pointed to that two persons and you told me awhile ago you were able to know their names.

Now[,] will you kindly point to Dennis Perez [y] Año?  
A: The man wearing blue shirt Sir.

The Interpreter:

Witness pointing to a person wearing blue shirt identified as Dennis Perez [y] Año, one of the accused in this case.

Q: What about the other person, what is his name?

A: Marvin[,] Sir.

Q: Will you kindly point to Marvin.

A: Its him[,] Sir[,] wearing gray t-shirt, semi-kalbo.

The Interpreter:

Witness identified a person by the name of Marvin Montero, the other accused.<sup>13</sup>

---

<sup>11</sup> *Id.* at 16.

<sup>12</sup> *Id.* at 19.

<sup>13</sup> *Id.* at 21.

From these circumstances, there is no mistake that from the actions of the appellants their main intention was to rob the victim of his daily collections, as employee of Philacor Credit Corporation, and that on the occasion thereof, a homicide was committed. This fact was corroborated by the testimony of Police Officer III Benjamin Tapeño who found during his investigation that the bag containing the victim's collection was missing.

The Court is also not convinced by the appellants' defense of denial and alibi.

*First*, as properly observed by the Regional Trial Court and the CA, appellants' alibi cannot be given more weight over Oarga's positive identification. In fact, alibi is always viewed with suspicion because it is inherently weak and unreliable. It assumes significance or strength only when amply corroborated by credible witnesses. Under the circumstances, a categorical and consistent positive identification, without any showing of ill motive on the part of the eyewitnesses testifying on the matter, prevail over a mere denial.<sup>14</sup>

*Second*, it bears stating that for the defense of alibi to prosper, the accused must prove not only that they were at some other place at the time the crime was committed, but that it was also impossible for them to be at the *locus criminis* at the time of the alleged crime. Such physical impossibility was not shown to have existed in this case.<sup>15</sup>

*Lastly*, although it is undisputed that only Montero shot the victim and that Perez took no part in the killing, the latter nonetheless failed to allege, much more prove, that he attempted to prevent the killing. His non-participation in the killing is, therefore, immaterial. With the existence of conspiracy between the appellants, the act of Montero are Perez' acts just the same.<sup>16</sup>

All told, the special complex crime of Robbery with Homicide under Article 294(1) of the Revised Penal Code is penalized with *reclusion perpetua* to death. Absent any mitigating nor aggravating circumstances, the penalty of *reclusion perpetua* was correctly imposed on the appellants. The awards of civil indemnity, moral damages and exemplary damages must be modified, however, in accordance with

<sup>14</sup> *People v. Espia*, 792 Phil. 794, 805 (2016).

<sup>15</sup> *People v. Butaslac*, G.R. No. 218274, March 13, 2019.

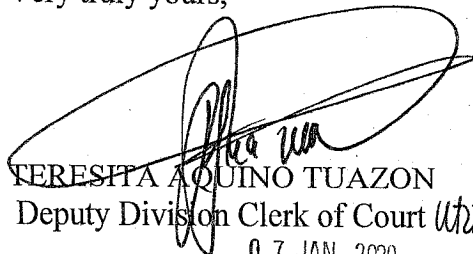
<sup>16</sup> *People v. Zafra*, G.R. No. 225784, February 4, 2019.

prevailing jurisprudence. According to *People v. Jugueta*,<sup>17</sup> the proper amounts of damages for the crime of Robbery with Homicide are: ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, ₱75,000.00 as exemplary damages, and ₱50,000.00 as temperate damages. These amounts shall earn interest of 6% *per annum* from finality of judgment until fully paid.<sup>18</sup>

**WHEREFORE**, the appeal is **DISMISSED**. The Decision dated April 20, 2017 of the Court of Appeals in CA-G.R. CR-HC No. 06889 is **AFFIRMED with MODIFICATION**. Accused-appellants DENNIS A. PEREZ and MARVIN A. MONTERO are hereby found **GUILTY** beyond reasonable doubt of Robbery with Homicide under Article 294(1) of the Revised Penal Code. They are sentenced to suffer the penalty of *reclusion perpetua*. Both are further **ORDERED** to pay the heirs of Ronaldo Castillo the following: ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, ₱75,000.00 as exemplary damages, and ₱50,000.00 as temperate damages. These amounts shall earn interest of 6% *per annum* from finality of judgment until fully paid.

**SO ORDERED.**" (Zalameda, *J.*, designated additional member per Special Order No 2724 dated October 25, 2019).

Very truly yours,

  
TERESITA AQUINO TUAZON  
Deputy Division Clerk of Court *Wht, 17*  
07 JAN 2020

<sup>17</sup> *People v. Jugueta*, 783 Phil. 806 (2016).

<sup>18</sup> *People v. Mancao*, G.R. No. 228952, July 17, 2019.



\*PUBLIC ATTORNEY'S OFFICE (reg)  
 Special & Appealed Cases Service  
 Department of Justice  
 PAO-DOJ Agencies Building  
 NIA Road corner East Avenue  
 Diliman, 1104 Quezon City

\*OFFICE OF THE SOLICITOR GENERAL (reg)  
 134 Amorsolo Street  
 1229 Legaspi Village  
 Makati City

THE DIRECTOR (reg)  
 Bureau of Corrections  
 1770 Muntinlupa City

\*DENNIS A. PERES (reg)  
 \*MARVIN MONTERO (reg)  
 Accused-Appellants  
 c/o The Director  
 Bureau of Corrections  
 1770 Muntinlupa City

HON. PRESIDING JUDGE (reg)  
 Regional Trial Court, Branch 91  
 Sta. Cruz, Laguna  
 (Crim. Case No. SC-11791)

JUDGMENT DIVISION (x)  
 Supreme Court, Manila

PUBLIC INFORMATION OFFICE (x)  
 LIBRARY SERVICES (x)  
 [For uploading pursuant to A.M. No. 12-7-SC]

OFFICE OF THE CHIEF ATTORNEY (x)  
 OFFICE OF THE REPORTER (x)  
 Supreme Court, Manila

COURT OF APPEALS (x)  
 Ma. Orosa Street  
 Ermita, 1000 Manila  
 CA-G.R. CR HC No. 06889

\*with copy of CA decision dated 20 April 2017  
*Please notify the Court of any change in your address.*  
 GR233830. 11/27/2019(140)URES

