



REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

SECOND DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, Second Division, issued a Resolution dated **16 November 2020** which reads as follows:*

“G.R. No. 247272 (*People of the Philippines v. Joseph Aboc and Richard Calderon*). — The appeal is devoid of merit.

Robbery with Homicide is defined and penalized under Article 294 of the Revised Penal Code, thus:

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:*

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; xxx

The elements of the crime are: 1) taking of personal property with the use of violence or intimidation against the person; 2) the property taken belongs to another; 3) the taking is characterized by intent to gain or *animus lucrandi*; and 4) on the occasion of the robbery or by reason thereof, the crime of homicide was committed.¹

In Robbery with Homicide, the offender's original intent is to commit the crime of robbery. The killing of the victim is only incidental. The act of killing, however, may occur before, during, or even after the robbery. So long as the homicide was committed by reason of or on the occasion of the robbery,

¹ *People v. Madrelejosa*, 828 Phil 732, 737 (2018).

the offense committed is the special complex crime of Robbery with Homicide.²

There is no question here that the prosecution had duly proven the presence of the elements of Robbery with Homicide. On August 4, 2008, two (2) masked assailants broke into the house of Fe S. Naduma (Fe). Armed with bladed weapons, they stabbed Fe multiple times to take her bag containing her earnings for the day. They also ransacked Fe's room and took the .38 caliber pistol they found inside her cabinet. Before they left, they threatened Fe's help Alma B. Cuerdo (Alma) that she too would be killed if she were to leave the room they kept her in.

As for the identity of the assailants, Alma testified that although they were wearing bonnets to cover their faces, she was able to recognize them as appellants because of their voices, height, and physical built, thus:³

Q: And do you know from your knowledge who robbed the deceased Fe S. Naduma?

A: Yes, I know.

Q: Who are they, Ms. Witness?

A: Joseph Macarayan Aboc.

Q: Who else, Ms. Witness?

A: Richard Calderon.

Q: How long have you known Joseph Aboc and Richard Calderon?

A: Long time ago.

Q: Since 2001, Ms. Witness?

A: Yes, Ma'am.

Q: Why do you know them, Ms. Witness?

A: Every Saturday and Sunday they used to come to the store.

Q: When you say they go there every Saturday and Sunday, do you mean every week of the month, every Saturday and Sunday, Ms. Witness?

A: Yes, Ma'am.

Q: What do Joseph Aboc and Richard Calderon call you, Ms. Witness?

A: Tata.

Q: Do you also know their nicknames?

A: I know, Ma'am.

Q: What is the nickname of Joseph Aboc?

A: Dodoy.

Q: How about Richard Calderon?

A: Ren-ren.

² *People v. Palema*, G.R. No. 228000, July 10, 2019.

³ TSN, July 7, 2009, pp. 6-26 as quoted in the trial court's Judgment dated April 13, 2015, pp. 8-18.

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Q: So, you said that you have known Joseph Aboc and Richard Calderon since 2001, could you also recognize their voices, Ms. Witness?

A: Yes, Ma'am, I can recognize their voices.

Q: Are you very familiar with their voices?

A: Yes, Ma'am.

Q: On August 4, 2008 at around 8 o'clock in the morning, where were you, Ms. Witness?

A: I was in the house.

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Q: Do you remember any unusual incident on August 4, 2008, at around eight o'clock in the evening, more or less?

A: Yes, I can still recall.

Q: What is this unusual incident?

A: I heard somebody was jumping at the back portion of the house.

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Q: Then after you locked the door, what happened next, if any?

A: It was destroyed by a certain man.

Q: So, you mean to say there was a man?

A: Yes, ma'am.

Q: Where did this man come from, if you know?

A: At the back portion.

Q: How about the deceased Fe S. Naduma, what happened to her?

A: She was asking for help from me.

Q: How did she ask help from you?

A: She said, "Ta, please help me."

Q: Why was she asking help from you?

A: Because she was about to be killed by a person.

Q: And after she asked help from you, what happened next, if any?

A: I was not able to hear her voice anymore.

Q: And how about you, what happened to you?

A: Then during that time, the door was destroyed and the man succeeded to destroy the door and he locked my neck and he pointed the knife he was bringing to my neck.

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Q: Then after that. Ms. Witness, what happened next?

A: I was brought by the culprit to the upstairs' portion of passing the other side.

Q: Then after that, what happened next?

A: When we arrived upstairs, I saw a man already bloodied, what happened next?

Q: Than after you saw a man already bloodied, what happened next?

A: He commanded me to open the room in order to look for the money and I told him I do not know.

Q: Which room of the house is this, Ms. Witness?

A: The room of Manang Fe Naduma.

Q: And after the person commanded you to open the room of Fe S. Naduma and you said, I do not know, what happened next?

A: Then after the man heard my reply that I do not know, suddenly the man tightened his grip on my neck and pointed the knife into my neck.

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Q: Who was this person?

A: It was Joseph Aboc.

Q: So, this is the person whom you saw, when you were already ascending, in front of you with a bloodied hand, is this the same person?

A: Yes, Ma'am.

Q: And then after he tried to open the room with the bunch of keys [sic], what happened next?

A: Then the other man also tightened his grip on my neck and I can hardly breathe.

Q: What did this man say to you, the one who was holding you?

A: He asked me, Where is the money?

Q: Did you say anything to the man who was holding you, if any?

A: I told him that I do not know.

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Q: Was he bringing anything else aside from that knife, if any?

A: He was also bringing a bag.

Q: What bag is this? Is this the same bag you saw the deceased Fe S. Naduma was bringing with her when she was already going towards the stairs?

A: Yes, Ma'am.

Q: How far were you when you saw the man with a bloodied hand bringing a knife and a bag? How far were you from him?

A: Just in front of me.

Q: And Ms. Witness, this incident happened at night. How were you able to see all these?

A: Because the upper portion of the house was well lighted.

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Q: At the time when the events were happening, you can describe the appearance of the two men that you have mentioned to us?

A: Yes, ma'am.

Q: What were they wearing, Ms. Witness?

A: They were wearing a black jacket and a porontong maong pants.

Q: Who was this person?

A: I am now describing Aboc.

Q: And how about his case then, can you describe his face?

A: I cannot describe his face because he was wearing a bonnet.

Q: So how did you know that he is Joseph Aboc?

A: His voice, his built and his height.

Q: How about the other one, Ms. Witness, can you describe him?

A: The man who was holding my neck was also wearing a bonnet.

Q: And who was this man, Ms. Witness?

A: Calderon.

Q: You mean Richard Calderon?

A: Yes, ma'am.

Q: And Ms. Witness, how about his dress, can you still remember his attire?

A: He was wearing a black sweatshirt and a black maong pants.

Q: You said earlier that his Joseph Aboc already ransacked the room of deceased Fe. S. Naduma and was able to get a gun. After that, what happened next?

A: Then he ordered me to get inside the room and directed me not to go outside or else he will do to me what he did to my master.

Q: Who was this person, Ms. Witness?

A: Joseph Aboc.

Q: How about Richard Calderon, what did he do?

A: The two of them pushed me into the room and, in fact, my buttocks hit the bed.

Q: You said, Ms. Witness, that the other person is Richard Calderon, how did you know that he is Richard Calderon?

A: During the time, I identified Richard Calderon because after pushing me towards the room and my buttocks hit the bed, I looked back. Upon looking back, I saw the face of Richard Calderon.

Q: But you said earlier, Ms. Witness, that he was wearing a bonnet. How did you recognize that it was Richard Calderon?

A: His voice, because he kept on asking as to where is the money.

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Q: So, after the incident in the house of deceased Fe Naduma, where did you meet accused Joseph Aboc and Richard Calderon next?

A: Here in the Mambajao Police Station.

Q: How many days was that after the incident?

A: When I arrived in the Police Station, this Richard Calderon was already there.

Q: And how about Joseph Aboc?

A: It was on the 6th that I saw this Joseph Aboc.

Q: So you mean two days after the incident?

A: Yes, Ma'am.

Q: What did you do when you saw them in the Police Station? Did you identify them?

A: Yes, Ma'am.

Q: Where they placed in a police line-up?

A: Yes, Ma'am.

Q: How many persons were there if you still remember?

A: Two of the accused were there.

Q: And how did you know that it was really Joseph Aboc? How did you identify him?

A: When this Joseph Aboc was showed to me by the police, I remembered him immediately.

Q: What was he wearing at that time, Ms. Witness?

A: He was wearing a black jacket. (Emphasis supplied)

The courts below gave full faith and credence to Alma's clear and straightforward testimony. As Alma narrated, she was able to recognize appellants whom she has known since 2001. Appellants were regulars at Fe's videoke and would engage in drinking sprees there on weekends. She had developed familiarity with their voices, physical built, and height, allowing her to recognize them despite wearing bonnets over their faces. More so, since she was in close proximity to the culprits. Too, she was taken to a well-lit room where at one point she actually saw the face of appellant Richard Calderon.

In *People v. Bulasag*,⁴ the Court held that identification by the sound of the voice as well as familiarity with the physical features of a person are sufficient and acceptable means of identification where it is established that the witness and the accused had known each other personally and closely for a number of years. Taking into account the circumstances of this case, the Court finds Alma's identification of appellants credible and sufficient evidence to pin them as the perpetrators of the crime.

Appellants, nevertheless, deny being the culprits and assail Alma's credibility. Reiterating their arguments before the Court of Appeals, they claim that Alma's testimony should not be believed. If she truly recognized them as Fe's assailants through their voices, physical built, and height, then she should have immediately and categorically reported them to the police.

⁴ 582 Phil. 243, 250-251 (2008).

We are not convinced.

For one, when the credibility of the eyewitness is at issue, due deference and respect is given to the findings of the trial court, its calibration of the testimonies, its assessment of the probative weight thereof, and its conclusions anchored on said findings, absent any showing that it had overlooked circumstances which would have affected the final outcome of the case. This is so because the trial court has the unique opportunity to observe the demeanor, conduct, and attitude of witnesses under grueling examination.⁵ Hence, appellate courts will not overturn the factual findings of the trial court unless there is a showing that the latter overlooked facts or circumstances of weight and substance that would affect the result of the case. The foregoing rule finds an even more stringent application where the findings of the trial court are sustained by the Court of Appeals, as here.

For another, we concur with the Court of Appeals that Alma's failure to recall the names of appellants immediately after the crime does not diminish her credibility. As the Court of Appeals aptly noted, it was conceivable that Alma may not have been able to immediately recognize and point out the persons who attacked them considering the manner and means by which the robbery was orchestrated and her state of shock after witnessing the instantaneous death of her master. It was only after she was able to compose herself at the police station that she was able to identify their assailants.⁶

In their final bid for acquittal, appellants point to Alma as the actual suspect. Suffice it to state, however, that no evidence was ever adduced to show that she committed or participated in the robbery. On the contrary, the police released her after the investigation in the absence of evidence to charge her with the crime.⁷

In fine, the courts below did not err in giving due credence to Alma's positive identification of appellants as the ones who robbed and killed Fe. Their denial and alibi, which by themselves are inherently weak, crumble in the face of Alma's positive and categorical testimony.⁸ The Court of Appeals, therefore, did not err in affirming the verdict of conviction against appellants for Robbery with Homicide.

Pursuant to Article 249(1) of the Revised Penal Code, the penalty for robbery shall be *reclusion perpetua* to death when by reason or on occasion thereof the crime of homicide shall have been committed. Meanwhile, under Article 63 of the Code, the maximum penalty shall be imposed when an aggravating circumstance attended the commission of the crime without any mitigating circumstance to offset the same.⁹

⁵ *People v. Pulgo*, 813 Phil. 205, 211-212 (2017).

⁶ *Rollo*, p. 16.

⁷ *Id.* at 17.

⁸ See *People v. Macaranas*, 811 Phil. 610, 624-625 (2017).

⁹ ARTICLE 63. *Rules for the Application of Indivisible Penalties*. — In all cases in which the law prescribes a single indivisible penalty, it shall be applied by the courts regardless of any mitigating or aggravating circumstances that may have attended the commission of the deed.

Here, the courts below held that the aggravating circumstance of abuse of superior strength attended the robbery and homicide, considering that appellants were armed with knives and could have easily overpowered their victims based on their gender and age.

We do not agree.

In *People v. Villanueva*,¹⁰ citing *Valenzuela v. People*,¹¹ the Court elucidated on the aggravating circumstance of abuse of superior strength, thus:

Abuse of superior strength is present whenever there is a notorious inequality of forces between the victim and the aggressor/s that is plainly and obviously advantageous to the aggressor/s and purposely selected or taken advantage of to facilitate the commission of the crime. **Evidence must show that the assailants consciously sought the advantage, or that they had the deliberate intent to use this advantage.** To take advantage of superior strength means **to purposely use force excessively out of proportion to the means of defense available to the person attacked.** The appreciation of this aggravating circumstance depends on the age, size and strength of the parties. (emphases and underscoring added)

Verily, the personal circumstances and physical characteristics of the assailant and the victim, by themselves, are not sufficient to support a conclusion that the aggravating circumstance of abuse of superior strength attended the commission of the crime. The prosecution must still prove that the assailant purposely, consciously, and deliberately abused his or her advantage over the victim, as exemplified by his or her behavior in committing the crime.

As it was though, lone eyewitness Alma did not see how Fe was actually killed. She did not witness the stabbing incident; she only heard Fe shout for help. Her testimony did not contain any detail on how appellants allegedly took advantage of their superior strength to overpower Fe. Under these conditions, abuse of superior strength cannot be appreciated as an aggravating circumstance.

In the absence of an aggravating circumstance in the commission of Robbery with Homicide, appellants should be sentenced to *reclusion perpetua*. The ruling, however, need not bear the phrase “without eligibility for parole” as it is only expressly stated when the impossible penalty would have been death were it not for the enactment of Republic Act No. 9346.¹²

In all cases in which the law prescribes a penalty composed of two indivisible penalties, the following rules shall be observed in the application thereof:

1. When in the commission of the deed there is present only one aggravating circumstance, the greater penalty shall be applied.

¹⁰ 807 Phil. 245, 254 (2017).

¹¹ 612 Phil. 907, 917 (2009).

¹² A.M. No. 15-08-02-SC — *Guidelines for the Proper Use of the Phrase “Without Eligibility for Parole in Indivisible Penalties:*

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[T]he following guidelines shall be observed in the imposition of penalties and in the use of the phrase without eligibility for parole:

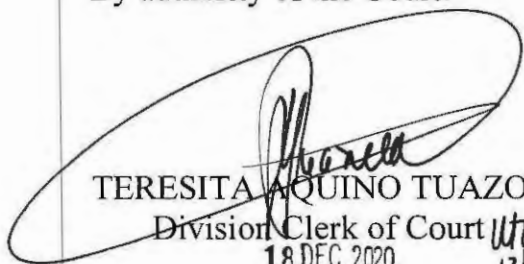
Accordingly, the Court reduces the award of civil indemnity, moral damages, and exemplary damages to ₱75,000.00 each, pursuant to *People v. Jugueta*.¹³ Meanwhile, the Court of Appeals properly increased the award of temperate damages to ₱50,000.00 in line with our ruling in *People v. Gallanosa*.¹⁴ These monetary awards shall earn six percent (6%) interest per annum from finality of this resolution until fully paid.

WHEREFORE, the appeal is **DENIED** for lack of merit. The Decision dated February 22, 2019 of the Court of Appeals in CA-G.R. HC No. 01440-MIN is hereby **AFFIRMED with MODIFICATION**.

Appellants **Joseph Aboc and Richard Calderon** are found **guilty** of the special complex crime of **Robbery with Homicide** and sentenced to **reclusion perpetua**. They are required to pay ₱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 six percent (6%) interest *per annum* from finality of this Resolution until fully paid.

SO ORDERED." (Rosario, J., designated additional member per S.O. 2797, dated November 5, 2020)

By authority of the Court:


TERESITA AQUINO TUAZON
Division Clerk of Court
18 DEC 2020
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- (1) In cases where the death penalty is not warranted, there is no need to use the phrase *without eligibility for parole* to qualify the penalty of *reclusion perpetua*; it is understood that convicted persons penalized with an indivisible penalty are not eligible for parole; and
- (2) When circumstances are present warranting the imposition of the death penalty, but this penalty is not imposed because of R.A. No. 9346, the qualification of *without eligibility for parole shall be used* in order to emphasize that the accused should not have been sentenced to suffer the death penalty had it not been for R.A. No. 9364.

¹³ 783 Phil. 806, 846 (2016).

¹⁴ 813 Phil. 850, 861 (2017).

Resolution

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G.R. No. 247272
November 16, 2020

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*with copy of CA Decision dated 22 Feb 2019
Please notify the Court of any change in your address.
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