

FIRST DIVISION

[G.R. No. 215332, July 24, 2017]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. MARK GAMBA Y NISSORADA, ACCUSED-APPELLANT.

R E S O L U T I O N

DEL CASTILLO, J.:

On appeal is the June 19, 2014 Decision^[1] of the Court of Appeals (CA) in CA-G.R. CR HC No. 05198 which affirmed with modification the July 29, 2011 Decision^[2] 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".

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 comer 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 Tamos (Sandagan) of his cash and possessions in the amount of P1,100.00. 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 P10,000.00 to Sandagan as moral damages, and the amounts of P25,000.00 as moral damages, P10,000.00 as exemplary damages, P66,047.10 as actual damages, and P75,000.00 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 P50,000.00 each. In addition, appellant was ordered to pay Sandagan temperate damages in the amount of P3,000.00. The awards of exemplary damages in the amount of P10,000.00; actual damages of P66,047.10; and civil indemnity of P75,000.00 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