

FIRST DIVISION

[G.R. No. 198020, July 10, 2013]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
JOSEPH BARRA, ACCUSED-APPELLANT.**

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. 04155^[2] 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 Joseph^[4] 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 information^[5] 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, 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 Report^[7]:

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]

The victim's mother, Flora Lagdaan, testified that she spent for funeral and burial expenses in the amount of P33,300.00.

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 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