

## SECOND DIVISION

[ G.R. No. 187733, February 08, 2012 ]

**PEOPLE OF THE PHILIPPINES, APPELLEE, VS. TEOFILO "REY"  
BUYAGAN, APPELLANT.**

### **R E S O L U T I O N**

**BRION, J.:**

We resolve the appeal, filed by Teofilo "Rey" Buyagan (appellant), from the decision<sup>[1]</sup> of the Court of Appeals (CA) dated December 19, 2008 in CA-G.R. CR-H.C. No. 01938. The CA decision<sup>[2]</sup> affirmed with modification the October 30, 2000 decision of the Regional Trial Court (RTC), Branch 6, Baguio City, finding the appellant guilty beyond reasonable doubt of the special complex crime of robbery with homicide, and sentencing him to suffer the death penalty.

#### **The RTC Ruling**

In its October 30, 2000 decision, the RTC found the appellant guilty beyond reasonable doubt of the special complex crime of robbery with homicide. It gave credence to the testimonies of witnesses Cristina Calixto and Melvyn Pastor that they saw the appellant shoot Jun Calixto after the latter grabbed the appellant's companion (herein referred to as John Doe) who had robbed the WT Construction Supply store. The lower court likewise gave credence to the testimonies of witnesses Allan Santiago, Joel Caldito, Jeanie Tugad, Carlos Maniago and Orlando Viray that they saw the appellant shoot Police Officer 2 (PO2) Arsenio Osorio while the latter was chasing him. The lower court further added that the gun recovered from the appellant tested positive for the presence of gunpowder nitrates. In its dispositive portion, the RTC ordered the appellant to pay the heirs of Calixto the amounts of P50,000.00 as civil indemnity, P22,400.00 as actual damages, and P592,000.00 as unearned income; and to pay the heirs of PO2 Osorio P50,000.00 as civil indemnity, P200,000.00 as moral damages, P50,690.00 as actual damages, and P1,588,600.00 as unearned income.<sup>[3]</sup>

#### **The CA Decision**

On intermediate appellant review, the CA affirmed the RTC decision, but modified the penalty imposed on the appellant from death to reclusion perpetua. The CA held that the appellant acted in concert with John Doe in committing the crime; in fact, he shot Calixto to facilitate the escape of John Doe. It explained that in the special complex crime of robbery with homicide, as long as the intention of the felon is to rob, the killing may occur before, during or after the robbery. The appellate court also ruled that the appellant failed to impute any ill motive against the prosecution witnesses who positively identified him as the person who shot Calixto and PO2 Osorio. It also disregarded the appellant's denial for being incredible.<sup>[4]</sup>

## **Our Ruling**

In this final review, we deny the appeal, but further **modify** the penalty imposed and the awarded indemnities.

### ***Sufficiency of Prosecution Evidence***

Essential for conviction of robbery with homicide is proof of a direct relation, an intimate connection between the robbery and the killing, whether the latter be prior or subsequent to the former or whether both crimes were committed at the same time.<sup>[5]</sup> In the present case, we find no compelling reason to disturb the findings of the RTC, as affirmed by the CA. The eyewitness accounts of the prosecution witnesses are worthy of belief as they were clear and straightforward and were consistent with the medical findings of Dr. Vladimir Villaseñor. Melvyn Pastor and Cristina Calixto positively identified the appellant as the person who shot Calixto at the back of his head as the latter was grappling with John Doe; Orlando Viray, Jeanie Tugad, Allan Santiago, and Joel Caldito all declared that the appellant shot PO2 Osorio at the market while the latter was chasing him. Significantly, the appellant never imputed any ill motive on the part of these witnesses to falsely testify against him.

The lower courts correctly ruled that the appellant and John Doe acted in conspiracy with one another. Conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. Conspiracy may be inferred from the acts of the accused before, during, and after the commission of the crime which indubitably point to and are indicative of a joint purpose, concert of action and community of interest. For conspiracy to exist, it is not required that there be an agreement for an appreciable period prior to the occurrence; it is sufficient that at the time of the commission of the offense, the malefactors had the same purpose and were united in its execution.<sup>[6]</sup>

The records show that after John Doe robbed the WT Construction Supply store, he casually walked away from the store but Calixto grabbed him. While John Doe and Calixto were grappling with each other, the appellant suddenly appeared from behind and shot Calixto on the head. Immediately after, both the appellant and John Doe ran towards the Hilltop Road going to the direction of the Hangar Market. Clearly, the two accused acted in concert to attain a common purpose. Their respective actions summed up to collective efforts to achieve a common criminal objective.

In *People v. Ebet*,<sup>[7]</sup> we explained that homicide is committed by reason or on the occasion of robbery if its commission was (a) to facilitate the robbery or the escape of the culprit; (b) to preserve the possession by the culprit of the loot; (c) to prevent discovery of the commission of the robbery; or, (d) to eliminate witnesses in the commission of the crime. As long as there is a nexus between the robbery and the homicide, the latter crime may be committed in a place other than the situs of the robbery.

Under the given facts, the appellant clearly shot Calixto to facilitate the escape of his robber-companion, John Doe, and to preserve the latter's possession of the stolen items.