

## SECOND DIVISION

**[ G.R. No. 180507, November 20, 2008 ]**

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
NESTOR BAJADA Y BAUTISTA, VICTOR CALISAY Y LOYAGA, AND  
JOHN DOE, ACCUSED-APPELLANTS.**

### DECISION

**VELASCO JR., J.:**

This is an appeal from the February 7, 2006 Decision<sup>[1]</sup> of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 01043 which affirmed the conviction of and death penalty for accused-appellants for the crime of robbery with homicide. Said judgment was originally handed down on October 30, 2001<sup>[2]</sup> by the Regional Trial Court (RTC), Branch 28 in Sta. Cruz, Laguna in Criminal Case No. SC-8076.

#### The Facts

An information dated January 21, 2000 was filed against accused-appellants Nestor Bajada y Bautista, Victor Calisay y Loyaga, and John Doe which accused them of committing robbery with homicide and serious physical injuries, as follows:

That on or about 11:30 o'clock in the evening of December 22, 1999, at Brgy. Calumpang, Municipality of Liliw, Province of Laguna and within the jurisdiction of this Honorable Court, the above-named accused, with intent to gain, without the knowledge and consent of the owner thereof, and by means of violence and intimidation upon person, enter the house of one ANTONIO C. VILLAMAYOR, and once inside, did then and there willfully, unlawfully and feloniously, take, steal and carry away the following valuables, to wit:

Cash Money -PhP 20,000.00;  
Assorted jewelry - 80,000.00;  
\$500.00 (current rate \$1.00=40.00)- 20,000.00; and  
some pertinent documents

with the total amount of HUNDRED TWENTY THOUSAND (PhP 120,000.00) PESOS, Philippine Currency, for their own personal use and benefit, owned and belonging to said Antonio C. Villamayor, and in the course of the said occasion, above-named accused while conveniently armed with a handgun and bladed weapon, conspiring, confederating and mutually helping one another, with intent to kill, did then and there willfully, unlawfully and feloniously, kick, attack, assault and stab ANTONIO C. VILLAMAYOR, resulting [in] his instantaneous death, and also inflicted upon ANABELLE ASAYTONO, stab wound on her left chest, thus, accused had commenced all the acts of execution which could have

produced the crime of Homicide, as a consequence, but nevertheless, did not produce it by reason/cause independent of the will of the accused, which prevented her death, to the damage and prejudice of the herein surviving heirs of Antonio Villamayor and offended party, Anabelle Asaytono.

CONTRARY TO LAW.<sup>[3]</sup>

Bajada and Calisay pleaded not guilty to the charge.

During trial, the prosecution sought to establish the following facts: Bajada and Calisay were overseers at Antonio C. Villamayor's farm in Bayate, Laguna. As overseers, they visited Villamayor's house in Liliw, Laguna at least four times a week to deliver vegetables from the farm.<sup>[4]</sup>

On December 22, 1999, around 11:30 p.m., while 81-year old Villamayor was at home with his 24 year-old live-in partner, Anabelle Asaytono, they heard someone call for Villamayor asking for coffee. The caller introduced himself as "Hector," Villamayor's grandson, but Asaytono recognized the voice as Bajada's. As Villamayor opened the door, the caller, "Hector," pushed the door open with the barrel of a two-foot long gun. Asaytono recognized "Hector" as Bajada because of his average physique, repulsive smell, the black bonnet which he often wore at work, the deep-set eyes, mouth, a lump on his cheek, and the green shirt which was given to him by Villamayor. Asaytono likewise recognized one of the men as Calisay, noting his hair cut, eye bags, and voice. Calisay wore a red handkerchief across his face and carried a 14-inch knife in his right hand. The third unidentified man, John Doe, wore a bonnet and carried a 2 ½ foot long gun with a magazine.<sup>[5]</sup>

Upon entering the house, John Doe said, "There are many people in Calumpang who are angry at you because you are a usurer engaged in 5-6, so give me Php 100,000 right now." John Doe made Villamayor sit down but when the latter refused, John Doe made him lie face down on the floor and kicked his back several times. Meanwhile, Bajada pointed his gun at Asaytono and demanded for money. Asaytono denied having any money. She was then made to lie face down on the ground and was kicked. John Doe asked from Villamayor the key to the cabinet which was a meter away from the latter. Villamayor brought out a key from his pocket and handed it to Bajada. Asaytono, who was able to stand up, saw the three accused unlock Villamayor's cabinet and took out its contents which consisted of documents and clothes. Accused-appellants also opened the drawer and took jewelry valued at Php 80,000 and the Php 20,000 and USD 500 cash.<sup>[6]</sup>

Thereafter, Bajada pushed Asaytono towards Villamayor, laying her head sideways on Villamayor's head. In this position, Asaytono was able to see Calisay repeatedly stab Villamayor on the back. Calisay then stabbed Asaytono on her left breast. Asaytono pretended to be dead as she lied on Villamayor who was still moving. The three men then hurriedly left the house. Asaytono stood up and saw through the three men move towards the rice field. She noticed that Villamayor's dog wagged its tail as it followed the three men, the way it did when accused-appellants would visit Villamayor.<sup>[7]</sup>

Assured that the men had left the area, Asaytono ran to the house of her neighbor,

Cristy Samparada, for help. After telling about incident to her neighbor, Asaytono lost consciousness and regained the same after two days at the Philippine General Hospital (PGH) in Manila. Dr. Michael Baccay, the attending physician, testified that Asaytono suffered pneumochemo thorax, or the presence of air and blood in the thoracic cavity of the left lung, which could cause death in six to eight hours if left untreated. Dr. Marilou Cordon, the medico-legal officer, testified that Villamayor's death was caused by hypovolemic shock secondary to stab wounds. She opined that the stab wounds may have been caused by a single bladed knife inflicted by one person. She added that the stab which pierced the right lung may have caused his instantaneous death due to blood loss.<sup>[8]</sup>

The incident was reported to the police of Liliw, Laguna on December 22, 1999. Based on the information given by Villamayor's daughter, Perlita, PO2 Ronald Pana invited Bajada for questioning on December 26. The following day, the police also invited Calisay for questioning. Thereafter, PO2 Pana and his team went to PGH to interview Asaytono. On December 28, 1999, Asaytono gave her sworn statement to the police officers of Liliw, Laguna and identified Bajada and Calisay as the perpetrators of the crime. The following day, she reiterated her statement during the preliminary investigation conducted by Judge Renato Bercales of the Municipal Circuit Trial Court (MCTC) in Magdalena, Laguna.

The defense presented Bajada, Calisay, and Editha Loyaga Calisay as witnesses. Bajada is Calisay's stepfather, while Editha is Bajada's live-in partner and Calisay's mother. Bajada and Calisay denied committing the crime and offered an alibi. They said they were husking coconuts until around 11:00 p.m. on December 22, 1999. They went to sleep afterwards in view of the work they had to do at Villamayor's farm on the following day. Editha corroborated this alibi alleging that she helped accused-appellants in gathering young coconuts on the night in question. Calisay testified that he learned about the death of Villamayor from Villamayor's nephew when he and Editha chanced upon him in town. Calisay and his mother thereafter went to the funeral parlor to see the body of Villamayor. When they got home, they informed Bajada of the news. Bajada went to see the remains of Villamayor to know the circumstances surrounding the latter's death. Bajada was arrested in the wake, questioned by the police, and eventually charged with the crime.<sup>[9]</sup>

Bajada testified that he had known Villamayor for two years and had a good relationship with the latter and Asaytono. He believed that Asaytono accused him as the perpetrator because he dissuaded Villamayor from visiting Asaytono's relatives in Bicol since Villamayor was too old and frail to travel. This was allegedly overheard by Asaytono. Bajada added that Villamayor fully trusted him with the secret that Asaytono will not inherit any land from Villamayor. Bajada also alleged that Asaytono accused him of the crime because he warned Villamayor not to leave money in the house because Bajada suspected Asaytono's motives. Calisay added that Asaytono used to get angry whenever Bajada would get money from Villamayor. Calisay, however, testified that he did not see any ill motive on the part of Asaytono when she testified against accused-appellants.

On October 30, 2001, the RTC rendered judgment, the dispositive portion of which reads:

WHEREFORE, IN THE LIGHT OF ALL THE FOREGOING CONSIDERATIONS,  
the Court finds both the accused NESTOR BAJADA and VICTOR CALISAY

as **GUILTY BEYOND REASONABLE DOUBT** as co-principals of the offense of **ROBBERY WITH HOMICIDE** as defined and punished under paragraph No. (1) of Article 294 of the Revised Penal Code as amended by the Death Penalty Law (RA 7659) and as charged in the Information and taking into consideration the two (2) aggravating circumstances enumerated hereinbefore without any mitigating circumstance that would offset the same, hereby sentences both the said accused to suffer the SUPREME PENALTY OF DEATH and to pay the heirs of the deceased Antonio Villamayor the sum of P50,000.00 as death indemnity and the sum of P78,620.00 as reasonable expenses incurred by reasons of said death and to pay the cost of the instant suit.<sup>[10]</sup>

Accused-appellants filed their brief before this Court on April 3, 2003, docketed as G.R. No. 153218. On September 21, 2004, we transferred the case to the CA in accordance with *People v. Mateo*.<sup>[11]</sup>

### **The Ruling of the CA**

In their appeal before the CA, accused-appellants reiterated their defenses of denial and alibi. They claimed that Asaytono's testimonies in court on March 30, 2000 and April 4 and 6, 2000 were inconsistent to the statements she gave to the police on December 28, 1999, and with the statements given to MCTC Judge Bercales on December 29, 1999. These alleged inconsistencies referred to the identity of the caller, the state of intoxication of accused-appellants, and the manner of identification of accused-appellants as the perpetrators of the crime.

The CA held that Asaytono's testimony was categorical and straightforward, and her identification of accused-appellants was consistent. Having worked with accused-appellants in the farm for a year, she can readily identify their facial features, voices, physique, and smell. According to the CA, the details which were lacking in her sworn statement but which she supplied in open court only served to strengthen her testimony. The CA did not lend credence to accused-appellants' defense of alibi since it was possible for them to be at the crime scene--they claimed that they slept at 11:00 p.m. while the incident happened at 11:30 p.m.; and the victims' house was only 15 minutes away by jeep from the farm.

The CA, however, disagreed with the trial court's finding of the aggravating circumstances of dwelling and additional serious physical injury. It said that the information failed to specifically allege the aggravating circumstance of dwelling; hence, it cannot be appreciated even if proved during trial. Also, applying *People v. Abdul*, the appellate court held that the homicides or murders and physical injuries committed on occasion or by reason of the robbery are merged in the composite crime of "robbery with homicide."<sup>[12]</sup> It concluded that absent any mitigating or aggravating circumstances, the penalty should be reduced to *reclusion perpetua*. The dispositive portion of the CA's judgment reads:

**WHEREFORE**, the instant appeal is DISMISSED. The Decision, dated 30 October 2001, of the Regional Trial Court of Sta. Cruz, Laguna, Branch 28, is *hereby* **AFFIRMED with MODIFICATION**. Accused-appellants are found guilty beyond reasonable doubt of robbery with homicide. Considering that there are neither mitigating nor aggravating circumstance which attended the commission of the crime, accused-