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THIRD DIVISION

[G.R. No. 217028, June 13, 2018]

PEOPLE OF THE PHILIPPINES PLAINTIFF-APPELLEE, V. BENJAMIN DOMASIG A.K.A. "MANDO" OR "PILIKITOT" ACCUSED-APPELLANT.

D E C I S I O N

MARTIRES, J.:

This is an appeal from the 18 September 2014 Decision[1] of the Court of Appeals (*CA*) in CA-G.R. CR-H.C. No. 06489 which affirmed with modification the 20 September 2013 Decision[2] of the Regional Trial Court, Branch 51, Sorsogon City (*RTC*), in Criminal Case No. 2004-6306 finding Benjamin Doniasig a.k.a. "Mando" or "Pilikitot" (*accused-appellant*) guilty of Robbery with Homicide.

THE FACTS

In an Information, dated 5 October 2004, accused-appellant was charged of the crime robbery with homicide. The information reads:

> That on or about the 5th day of September, 2004, at about 11:00 o'clock in the evening, along [XXX], [XXX] City, Philippines and within the jurisdiction of this Honorable Court, the said accused, with intent to gain, armed with a bladed weapon, did then and there, wilfully, unlawfully and feloniously took, steal and carry away from one [AAA],[3] a 14 years old minor, cash money amounting to P300.00 against his will and without his consent and when said victim resisted, accused thereafter covered his mouth and simultaneously stabbed him four times inflicting upon him mortal wounds which caused his instantaneous death, to the damage and prejudice of his legal heirs.[4]

Upon arraignment, accused-appellant pleaded not guilty to the charge.

Version of the Prosecution

On 5 September 2004, Gerald Gloriana (*Gloriana*) testified that he was outside the City Mart along Magsaysay Street with his friend, 14-yearold victim AAA. They had just finished buying and selling plastic bottles and scrap materials. The victim put his earnings for the day, amounting to P300.00, inside a plastic container which he then placed inside the cart which served as his makeshift bed as he often slept on the streets. At around 11:00 o'clock in the evening, Gloriana went down a nearby bridge to defecate, leaving behind the victim who was sleeping inside the cart. Later, as Gloriana was climbing up from under the bridge, he saw accused-appellant standing over the sleeping victim. Accused-appellant then stabbed the victim several times before running away. Gloriana, shocked and terrified, went back under the bridge where he spent the night in hiding.[5] When the victim's body was discovered

the following morning, the police officers recovered the plastic container inside the cart, but the money was missing.[6]

Gloriana further testified that he was approximately six (6) to eight (8) meters away from the incident, but he recognized accused-appellant because the area was well-lit and because of a conspicuous tattoo on accused-appellant's right arm. He added that he and the victim used to be friends with accused-appellant.[7]

Dr. Inocencio Lee (*Dr. Lee*) affirmed that he conducted the postmortem examination on the body of the victim. The victim suffered three stab wounds on the shoulder and one on the chest which pierced the left lateral surface of the heart, causing instantaneous death. Dr. Lee further stated that the victim died in a prone position without any defensive wounds.[8]

Version of the Defense

Accused-appellant denied robbing and killing the victim. He claimed that on 5 September 2004, he was at Barangay Bato, Nabua, Albay, and was working as a caller in a bingo game at an amusement park where he had been employed since 2003. The manager prohibited workers from leaving the grounds during work hours. Further, he denied knowing the victim and Gloriana.[9]

The Regional Trial Court's Ruling

In its decision, the RTC found accused-appellant guilty of robbery with homicide. It ruled that the consistent, clear, and categorical statements of Gloriana that it was accused-appellant who took the victim's money and then stabbed him deserve full faith and credence. The trial court added that the testimony of Gloriana was corroborated by Dr. Lee. It declared that in the face of the positive identification of accused-appellant by the prosecution witness, the defense of denial and alibi must fail. The RTC opined that accused-appellant did not present any witness to strengthen his defense of alibi and that it was not shown that it was physically impossible for him to be present in Sorsogon City, on 5 September 2004. The *fallo* reads:

> **WHEREFORE**, the Court finds accused **Benjamin Domasig** @ Mando/Pilikitot, **GUILTY** beyond reasonable doubt of the crime of robbery with homicide defined and penalized under Article 294, paragraph 1 of the Revised Penal Code in relation to Article 63 paragraph 1 thereof and hereby sentences him to suffer the penalty of **reclusion perpetua**.
>
> He is further ordered to indemnify the heirs of [AAA] the amounts of Php50,000.00 as civil indemnity and Php50,000.00 as moral damages.
>
> The Warden of the Bureau of Jail Management and Penology, Sorsogon City District Jail is hereby ordered to bring the accused to the National Penitentiary in Muntinlupa City to serve his sentence and to inform this Court of his compliance thereof.[10]

Aggrieved, accused-appellant appealed before the CA.

The Court of Appeals Ruling

In its decision, the CA affirmed the conviction of accused-appellant. It held that Gloriana's testimony was not affected by his inconsistent statements regarding the number of times accused-appellant stabbed the victim because he testified before the trial court more than two (2) years after the incident. The appellate court lent credence to Gloriana's testimony that the area where the victim was sleeping was well-lit, enabling him to see clearly the crime as it unfolded; and that the victim and accused-appellant were friends, thereby substantiating his claim that even if accused-appellant's back was against him, he could identify the latter because of a tattoo on his right arm. It disposed of the case in this wise:

> **WHEREFORE**, premises considered, the instant appeal is hereby **DENIED**. The Decision dated September 20, 2013 of the Regional Trial Court, Branch 51, Sorsogon City is **AFFIRMED with MODIFICATION** in that all the amounts of damages awarded are subject to interest at the legal rate of 6% per annum, to be reckoned from the date of finality of this judgment until fully paid. [11]

Hence, this appeal.

ISSUE

> WHETHER THE GUILT OF ACCUSED-APPELLANT FOR ROBBERY WITH HOMICIDE HAS BEEN PROVEN BEYOND REASONABLE DOUBT.

Accused-appellant argues that Gloriana made contradictory statements regarding the name of the perpetrator. On one hand, he identified him as "Mando" while his sworn statement revealed that he gave the full name of the accused-appellant; that Gloriana's attention was not focused on the stabbing incident because he was answering the call of nature at that time; that Gloriana was around six to eight meters away from the incident; and that Gloriana failed to describe the clothing or any other striking feature of accused-appellant for purposes of identification.

THE COURT'S RULING

Robbery with homicide qualifies when a homicide is committed either by reason or on occasion of the robbery. In charging robbery with homicide, the *onus probandi* is to establish: (a) the taking of personal property with the use of violence or intimidation against a person; (b) the property belongs to another; (c) the taking is characterized with *animus lucrandi* or with intent to gain; and (d) on the occasion or by reason of the robbery, the crime of homicide, which is used in the generic sense, was committed.[12] A conviction requires that robbery is the main purpose 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.[13]

First, in order to sustain a conviction for the crime of robbery with homicide, it is necessary that the robbery itself be proven as conclusively as any other essential element of the crime.[14] In order for the crime of robbery with homicide to exist, it must be established that a robbery has actually taken place and that, as a consequence or on the occasion of robbery, a homicide be committed.[15]

For robbery to apply, there must be taking of personal property belonging to another, with intent to gain, by means of violence against or intimidation of any person or by using force upon things.[16] In this case, the testimony of Gloriana was

offered to prove that robbery was committed. A closer look at the testimony of Gloriana, however, failed to convince us that indeed robbery had taken place:

> [Court]: After buying bottles what happened?
>
> [Gloriana]: Late in the evening of that day, this Black Jack was sleeping in his pushcart.
>
> Q: And what is the real name of this Black Jack you have just mentioned?
> A: Only Black Jack, I call him Black Jack.
>
> Q: This Black Jack is the victim in this case?
> A: Yes, Ma'am.
>
> Q: Can you tell us where was Black Jack in the evening of September 5, 2004?
> A: Inside his pushcart.
>
> Q: What was he doing inside his pushcart?
> A: He was sleeping.
>
> Q: Where was the pushcart located?
> A: The pushcart was in front of the City Mart.
>
> Q: You saw Black Jack at that time?
> A: Yes, Ma'am.
>
> Q: What were you doing at that time?
> A: I was answering the call of nature.
>
> Q: Then what happened?
> A: I did not come out of my place because I was afraid.
>
> Q: What are you afraid of?
> **A: I was afraid because I saw Mando stabbed Black Jack.**
>
> Q: Before answering the call of nature, was the victim already stabbed?
> **A: When I was about to come out, I saw Mando stabbing Black Jack.**
>
> [Prosecutor Zacarias]: Where did you have your call of nature?
> A: Under the bridge.
>
> Q: After answering the call of nature, what did you do next?
> A: I came out of the cover.
>
> [Court]: Can you see people in the street if you were out of the street?
> A: Yes, Your Honor and at that time I was about to climb over the bridge.
>
> Q: And then you saw this accused Mando?
> A: Yes, Your Honor.
>
> **[Prosecutor Zacarias]: What did you see after climbing over the bridge?**
> **A: I saw Mando holding an ice pick.**