



REPUBLIC OF THE PHILIPPINES  
SUPREME COURT  
Manila

SECOND DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, Second Division, issued a Resolution dated **August 30, 2023** which reads as follows:*

**“G.R. No. 261695 (People of the Philippines, Plaintiff-appellee v. Jose S. Cagalawan, Accused-appellant).** — This Court resolves an Appeal<sup>1</sup> from the Decision<sup>2</sup> of the Court of Appeals (CA), which affirmed the Decision<sup>3</sup> of the Regional Trial Court (RTC), convicting accused-appellant Jose S. Cagalawan (*Cagalawan*) of robbery with homicide.

The instant case stemmed from an Information charging Cagalawan with robbery with homicide. The accusatory portion of which reads:

That on April 4, 2007 at more or less 7:45 o'clock [sic] in the evening, at Poblacion, Gitagum, Misamis Oriental, Philippines and within the jurisdiction of the Honorable Court, the above-named accused, conspiring, confederating and mutually helping one another for a common purpose with intent to gain and by means of violence or intimidation of persons, did then and there willfully, unlawfully and feloniously take and carry away the Nokia 3315 valued at PHP3,000 and Sony Ericson T-68 valued at Php 2,000 pesos owned by Charlotte Paculba y Cabatuan and Rachelle Buray y Vayson, respectively, against their will and consent and by reason or on the occasion of the robbery accused JOSE S. CAGALAWAN who was then armed with a handgun with treachery, did then and there willfully, unlawfully and feloniously shot DEXTER NAYA, to his head and left thigh, the injury on his head caused his untimely death, to the damage and prejudice of Charlotte Paculba y Cabatuan and Rachelle Buray y Vayson in the amount of the value of their respective cellular phones and the heirs of DEXTER NAYA in such amount as may be allowed by the court.

CONTRARY TO LAW.<sup>4</sup>

<sup>1</sup> CA rollo, p. 128.

<sup>2</sup> *Id.* at 109–127. The December 1, 2020 Decision in CA-G.R. CR-HC No. 02060-MIN was penned by Associate Justice Evalyn M. Arellano-Morales and concurred in by Associate Justices Edgardo A. Camello and Angelene Mary W. Quimpo-Sale of the Twenty-First Division, Court of Appeals, Cagayan de Oro City.

<sup>3</sup> Records, pp. 322–331. The May 7, 2018 Decision in Criminal Case No. 2007-1587 was penned by Presiding Judge Marissa P. Estabaya of Branch 44, Regional Trial Court, Initao, Misamis Oriental.

<sup>4</sup> *Id.* at 2.

12/14

Upon arraignment, Cagalawan pleaded not guilty to the offense charged. Pre-trial commenced. Thereafter, trial on the merits ensued.<sup>5</sup>

On April 4, 2007, at around 7:45 p.m., in Purok 1, Poblacion, Gitagum, Misamis Oriental, while Harold Paculba (*Harold*), Dexter “Bodik” Naya (*Dexter*), Gilbert Balane, Bernard Jul Bacabis (*Bernard*), and Derick Paculba were sitting outside Harold’s house, they saw two men approaching Charlotte Paculba (*Charlotte*) and Rachelle Buray (*Rachelle*) who were sitting on the box culvert on the side of the highway and texting using their cellular phones. Both men were wearing caps and armed with .38 revolver and .45 caliber pistols. They pointed the said guns to Charlotte and Rachelle, then took away the latter’s cellular phones—a Nokia 3315 and a Sony Ericson, respectively.<sup>6</sup>

A certain Genesis Naya (*Genesis*) was heading to the market when he passed by Charlotte and Rachelle. The robber with a .38 revolver poked Genesis at the head, then they grappled. Bernard and Harold came to aid Genesis. The robber with .45 caliber pistol shot Harold but, it only hit the two bottles he was holding. Subsequently, Dexter came to aid Harold and grappled with the robber who shot Harold. Subsequently, the robber shot Dexter in his left leg. After hitting Dexter’s left leg, the robber shot the latter’s head, which made him fall to the ground. Consequently, Harold jumped off the canal and saw a red STX motorcycle which the robbers used to escape. The robbers left a .38 revolver, white shirt, a dirty white and black cap which were subsequently turned over to the police.<sup>7</sup>

Meanwhile, Ronilo Naya was in his house when he heard the gunshots. He then went out to check what happened and found out that his eldest son, Dexter, was wounded. Dexter was immediately brought to the Provincial Hospital on board an ambulance.<sup>8</sup>

On April 10, 2007 or after five days from the time he was brought to the hospital, Dexter died. Dr. Tammy Uy prepared and signed an autopsy report detailing the wounds sustained by Dexter and the cause of his death which was the gunshot wound on his head.<sup>9</sup>

After two months or on June 10, 2007, SPO1 Alex Buray informed Dexter’s mother that some thieves were caught in Cagayan de Oro City and one of them was the suspect for the killing of Dexter. They went immediately to the police station of Cagayan de Oro City with the other witnesses who identified one of the persons apprehended as Cagalawan.<sup>10</sup>

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<sup>5</sup> *Rollo*, p. 10.

<sup>6</sup> *Id.* at 11.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.* at 11–12.

<sup>9</sup> *Id.* at 12.

<sup>10</sup> *Id.*

For his part, Cagalawan, denied the allegations against him. He narrated that on April 4, 2007, he arrived at the house of his cousin, Lourdesita Edroso (*Lourdesita*). At more or less 7:45 p.m., he was helping Lourdesita in preparing for their rice cake business. In turn, Lourdesita corroborated the testimony of Cagalawan. She added that Cagalawan has been living with them since 2005. On June 7 to 8, 2007, Cagalawan asked permission from Lourdesita to sleep in the house of his girlfriend and had never returned thereafter.<sup>11</sup>

The RTC rendered a Decision.<sup>12</sup> The dispositive portion thereof reads:

WHEREFORE, premises considered, judgment is hereby rendered finding accused JOSE S. CAGALAWAN GUILTY beyond reasonable doubt of Robbery with homicide hereby sentences him to suffer the penalty of reclusion perpetua, without eligibility of parole, and to indemnify the heirs of Dexter Naya the following amounts of [PHP]100,000.00 as civil indemnity, [PHP]100,000.00 as moral damages, [PHP]100,000.00 as exemplary damages.

Accused Jose Cagalawan is also ordered to indemnify Charlotte Paculba the amount of [PHP]1,600 and Rachel[le] Buray the amount of [PHP]500.00 for the cellphones taken from them during the robbery, all with legal interest at the rate of six percent (6%) per annum from the date of finality of judgment until full payment.

SO ORDERED.<sup>13</sup>

The RTC held that the prosecution has proven beyond reasonable doubt that Cagalawan, together with a companion, conspired together in robbing Charlotte and Rachelle and in killing Dexter with impunity on robbery. The RTC appreciated treachery as a generic aggravating circumstance in the commission of the crime, hence it imposed the higher penalty of death and indemnified the heirs of Dexter the following amounts of PHP 100,000.00 as civil indemnity, PHP 100,000.00 as moral damages, PHP 100,000.00 as exemplary damages.

Aggrieved, Cagalawan filed a Notice of Appeal.<sup>14</sup> The CA rendered a Decision.<sup>15</sup> The dispositive portion thereof reads:

WHEREFORE, the Appeal is DENIED. The Decision dated [May 7], 2018 of the Regional Trial Court, Branch 44, Initao, Misamis Oriental in Criminal Case No. 2007-1587 is AFFIRMED, WITH MODIFICATION, in that all damages awarded shall also earn legal interests at the rate of six percent (6%) per annum from the finality of the judgment until full payment.

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<sup>11</sup> *Id.* at 13.

<sup>12</sup> Records, p. 322-331.

<sup>13</sup> *Id.* at 331.

<sup>14</sup> *Id.* at 333.

<sup>15</sup> CA rollo, p. 109-127.

SO ORDERED.<sup>16</sup>

The CA likewise held that all the elements of robbery with homicide are present in this case. It gave credence to the testimony of Charlotte, finding the same to be coherent and consistent, who positively identified the person who took their cellphone as Cagalawan. Further, it gave credence to the testimony of Harold, that on the occasion of the robbery, Cagalawan shot and killed Dexter.

Hence, this appeal.

### Issue

Whether Jose S. Cagalawan is guilty beyond reasonable doubt of robbery with homicide.

### This Court's Ruling

The appeal is bereft of merit.

Article 294(1) of the Revised Penal Code (*RPC*) provides:

Article 294. Robbery with violence against or intimidation of persons — Penalties. — Any person guilty of robbery with the use of violence against or intimidation of any person shall suffer:

1. The penalty of reclusion perpetua to death, when by reason or on occasion of the robbery, the crime of homicide shall have been committed, or when the robbery shall have been accompanied by rape or intentional mutilation or arson.

The elements of robbery with homicide are: “(1) the taking of personal property with violence or intimidation against persons; (2) the property taken belongs to another; (3) the taking was done with *animo lucrandi*; and (4) on the occasion of the robbery or by reason thereof, homicide was committed.”<sup>17</sup>

In *People v. De Jesus*,<sup>18</sup> this Court explained the phrase “*when by reason or occasion of the robbery, the crime of homicide shall have been committed*” as stated in Article 294(1) of the *RPC*, thus:

In robbery with homicide, the original criminal design of the malefactor is to commit robbery, with homicide perpetrated on the occasion

<sup>16</sup> *Id.* at 126.

<sup>17</sup> *People v. Palema*, 856 Phil. 480, 492 (2019) [Per J. Leonen, Third Division].

<sup>18</sup> 473 Phil. 405, 427–428 (2004) [*Per Curiam, En Banc*].



or by reason of the robbery. The intent to commit robbery must precede the taking of human life. The homicide may take place before, during or after the robbery. It is only the result obtained, without reference or distinction as to the circumstances, causes or modes or persons intervening in the commission of the crime that has to be taken into consideration. There is no such felony of robbery with homicide through reckless imprudence or simple negligence. The constitutive elements of the crime, namely, robbery and homicide, must be consummated.

It is immaterial that the death would supervene by mere accident; or that the victim of homicide is other than the victim of robbery, or that two or more persons are killed or that aside from the homicide, rape, intentional mutilation, or usurpation of authority, is committed by reason or on the occasion of the crime. Likewise, immaterial is the fact that the victim of homicide is one of the robbers; the felony would still be robbery with homicide. Once a homicide is committed by or on the occasion of the robbery, the felony committed is robbery with homicide. All the felonies committed by reason of or on the occasion of the robbery are integrated into one and indivisible felony of robbery with homicide. The word "homicide" is used in its generic sense. Homicide, thus, includes murder, parricide, and infanticide.

....

When homicide is committed by reason or on the occasion of robbery, all those who took part as principals in the robbery would also be held liable as principals of the single and indivisible felony of robbery with homicide although they did not actually take part in the killing, unless it clearly appears that they endeavored to prevent the same.

If a robber tries to prevent the commission of homicide after the commission of the robbery, he is guilty only of robbery and not of robbery with homicide. All those who conspire to commit robbery with homicide are guilty as principals of such crime, although not all profited and gained from the robbery. One who joins a criminal conspiracy adopts the criminal designs of his co-conspirators and can no longer repudiate the conspiracy once it has materialized.

Homicide is said to have been committed by reason or on the occasion of robbery if, for instance, it was committed to (a) 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.<sup>19</sup> (Citations omitted)

It must be stressed that in robbery with homicide, the offender's original intent must be the commission of robbery. The killing is merely incidental and subsidiary. Also, robbery with homicide is committed when the robbers kill their victims, or bystanders who attempt to thwart the robbery.

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<sup>19</sup> *Id.* at 427-428.

In a similar vein, Cagalawan, together with his companion, with intent to gain and with the use of violence and intimidation, as they were armed with a .38 revolver and a .45 caliber pistol, forcibly took away the cellphones of Charlotte and Rachelle. Thereafter, when Dexter came to aid the victims, Cagalawan shot and killed Dexter.

Charlotte positively and categorically identified Cagalawan as the one who forcibly took away both her and Rachelle's cellphones, to wit:

Q: While you were sitting-talking with your cousin Rachelle Buray on that date and time, what happened next, if any?

A: Suddenly, there were two (2) men who went near in front of us.

Q: After these two persons approached you, what did you do next, if any?

A: They showed us their guns, and they positioned each of them beside us.

Q: If those two persons who showed [their] firearms at that time to you, if you will see them again, can you still identify them?

A: Yes Sir. I can.

Q: The two of them?

A: Only one, Sir.

Q: And that persons(sic) that you identified as one of those who showed their guns to you at that time, what color of shirt is he wearing now?

A: Yellow, Sir.

Q: Where is he sitting now?

A: There, Sir. (witness is pointing to a person inside the courtroom who identified himself as Jose Cagalawan)<sup>20</sup>

....

The person you mentioned that followed that person, is he in court today?

A: Yes sir.

Q: Who was that person?

A: Jose Cagalawan, Sir.<sup>21</sup>

The testimony of Charlotte was corroborated by Rachelle who recounted the robbery incident, to wit:

Q: What happened next, if any?

A: Then they sat between us.

Q: Then after they sat down, what happened?

A: They took our cellphones.

Q: Who took the cellphone?

<sup>20</sup> TSN, February 26, 2015, pp. 4-5.

<sup>21</sup> *Id.* at 6-7.

A; The guy sitting at the left.

Q: How many cellphones did they manage to take at that time from the two of you?

A: Two (2).<sup>22</sup>

In addition, Rachelle witnessed the incident where Cagalawan shot Dexter, to wit:

Q: After he went away from the spot where they were fighting each other, what happened next if any?

A: And then we just saw from the window that Dexter Naya was shot by the second time by the tall person.

Q: How far were you when you saw that tall person shot Dexter Naya?

A: From the place we were sitting here over there from the window. Estimated 5 meters.

Q: Then what happened after they shot Dexter Naya?

A: They ran away.

Q: The two persons that you saw shot Dexter Naya, is that person in court today?

A: Yes sir.

Q: The same accused Jose Cagalawan?

A: Yes sir.<sup>23</sup>

Harold further narrated in detail that a scuffle ensued between Cagalawan and Dexter, and in the process, Cagalawan shot Dexter twice, to wit:

Q: While they were fighting, what happened next, if any?

A: I was on my way to where they were at that time to get the weapon from Jose Cagalawan and Dexter Naya were fighting.

Q: After that, what happened next, if any?

A: When I was already near to where they were at that time, Jose Cagalawan pushed Dexter Naya.

Q: After Jose Cagalawan pushed Dexter Naya, what happened next, if any?

A: Then Jose Cagalawan shoot Dexter Naya twice.

Q: How far were you when Dexter Naya was shoot by Jose Cagalawan?

A: 3 meters sir.

Q: What was the weapon used when Jose Cagalawan shoot Dexter Naya?

A: .45 caliber.

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<sup>22</sup> TSN, March 2, 2016, p. 7.

<sup>23</sup> *Id.* at 8-9.

Q: After Jose Cagalawan, by the way, the person you mentioned as Jose Cagalawan that shoot Dexter Naya, is Jose Cagalawan in court today?

A: Yes, sir.

Q: Will you please point at him?

A: Witness pointed to a man who when asked identified himself as Jose Cagalawan.<sup>24</sup>

....

Q: And where was Dexter hit?

A: First shot was hit in the left thigh and then the second he was hit in the head.

Q: And when Dexter was shot twice by Cagalawan, as you said, how was the condition of Dexter at that time, if you know?

A: He was lying down with eyes closed.

Q: Where was he lying down?

A: In the ambulance in the place of the incident, your honor.

Q: Before the ambulance came, you said that you were there when Cagalawan shoot Dexter twice. After shooting twice you said that Dexter was hit on the left thigh and on the face is that correct?

A: Yes, your honor.

Q: Okey, after the shooting, what happened to Dexter right there and then?

A: He was lying down.<sup>25</sup>

From the foregoing testimonies, it is evident that the primary objective of Cagalawan is to rob Charlotte and Rachelle. The said victims were only sitting at a culvert in the highway, when suddenly, Cagalawan and an unidentified companion approached them armed with weapons and forcibly took away their cellphones. Thereafter, Dexter came to help the victims. Cagalawan and Dexter grappled with each other which resulted in Cagalawan shooting Dexter with his .45 calibre pistol on the left thigh and immediately in the head causing his death. Dr. Tammy Uy testified that Dexter's cause of death was the fatal gunshot wound on his head, as evidenced by Dexter's Death Certificate<sup>26</sup> and Autopsy Report.<sup>27</sup> Clearly, Cagalawan killed Dexter on the occasion or by reason of robbery. Thus, the crime committed is robbery with homicide.

The RTC held that treachery is present as a generic aggravating circumstance in the commission of the crime, thus it imposed the higher penalty.<sup>28</sup> We do not agree.

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<sup>24</sup> TSN, August 18, 2011, p. 6.

<sup>25</sup> *Id.* at 17-18.

<sup>26</sup> Records, p. 20

<sup>27</sup> *Id.* at 21.

<sup>28</sup> *Id.* at 330.



In *People v. Escote Jr.*,<sup>29</sup> this Court held that treachery is a generic aggravating circumstance to robbery with homicide, thus:

Treachery is not an element of robbery with homicide. Neither does it constitute a crime especially punishable by law nor is it included by the law in defining the crime of robbery with homicide and prescribing the penalty therefor. Treachery is likewise not inherent in the crime of robbery with homicide. Hence, treachery should be considered as a generic aggravating circumstance in robbery with homicide for the imposition of the proper penalty for the crime.<sup>30</sup>

Here, treachery, as a generic aggravating circumstance, merely increases the penalty for robbery with homicide conformably with Article 63 of the RPC, as amended, in the absence of any mitigating circumstance. Records are bereft of proof that the shooting made by Cagalawan had been deliberately adopted as a mode of attack intended to ensure the killing of Dexter without the latter having the opportunity to defend himself. No proof had been adduced to show that Cagalawan consciously planned or predetermined the methods to insure the commission of the crime. Therefore, the RTC erred in ruling that treachery is present as a generic aggravating circumstance in the commission of the crime.

Lastly, Cagalawan's contention that his defenses of denial and alibi should not have been outright disregarded considering the failure of the prosecution to prove his guilt beyond reasonable doubt holds no basis. The settled rule is that "both denial and alibi are inherently weak defenses which cannot prevail over the positive and credible testimony of the prosecution witness that the accused committed the crime."<sup>31</sup> "Thus, as between a categorical testimony which has a ring of truth on one hand, and a mere denial and alibi on the other, the former is generally held to prevail."<sup>32</sup> The mere denial of Cagalawan, without any corroborative evidence, convinces this Court to pronounce a verdict of conviction.

It is provided under Article 294(1) of the RPC that the penalty of *reclusion perpetua* to death shall be imposed when by reason or on occasion of the robbery, the crime of homicide shall have been committed. In relation thereto is Article 63 of RPC which provides that in cases where the law prescribes a penalty composed of two indivisible penalties and when there are no mitigating or aggravating circumstances in the commission of the crime, the lesser penalty should be applied. In the case at bar, since there are neither aggravating or mitigating circumstances in the commission of the crime, the penalty to be imposed on Cagalawan is *reclusion perpetua*.

<sup>29</sup> 448 Phil 749, 792 (2003) [Per J. Callejo Sr., *En Banc*].

<sup>30</sup> *Id.*

<sup>31</sup> *People v. Linsie*, 722 Phil. 374, 381 (2013) [Per J. Leonardo-De Castro, First Division].

<sup>32</sup> *People v. Lagbo*, 730 Phil. 834, 847 (2016) [Per J. Peralta, Third Division].

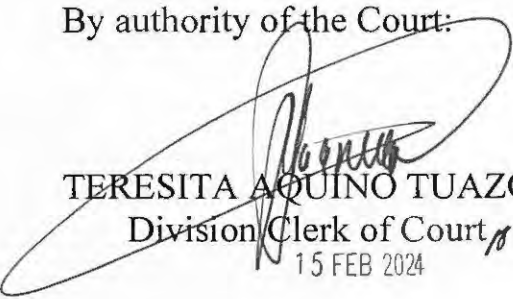
As to the award of civil liabilities, this Court finds it proper to reduce the amount of damages. In view of *People v. Juguetta*,<sup>33</sup> there being no ordinary aggravating or mitigating circumstance, the proper amounts for which Cagalawan must be held liable for the death of Dexter should be PHP 75,000.00 as civil indemnity, PHP 75,000.00 as moral damages, and PHP 75,000.00 as exemplary damages. We also find it appropriate to grant temperate damages in the amount of PHP 50,000.00 considering that no documentary evidence of burial or funeral expenses was submitted in court.<sup>34</sup> Further, We affirm the actual damages awarded by the RTC to Charlotte and Rachelle since the prosecution has able to substantiate the actual value of their cellphones, through Charlotte<sup>35</sup> and Rachelle's<sup>36</sup> testimony. Lastly, all the monetary awards shall earn 6% interest per annum from finality of this Resolution until fully paid.

**FOR THESE REASONS**, the appeal is **DENIED**. The Decision dated December 1, 2020 of the Court of Appeals in CA-G.R. CR-HC No. 02060-MIN is hereby **AFFIRMED with MODIFICATIONS**. Accused-appellant Jose S. Cagalawan is hereby found **GUILTY** beyond reasonable doubt of **ROBBERY WITH HOMICIDE** as defined and penalized Article 294(1) of the Revised Penal Code and is sentenced to suffer the imprisonment of *reclusion perpetua*. He is further **ORDERED** to **PAY** the heirs of Dexter Naya, civil indemnity in the amount of PHP 75,000.00, moral damages in the amount of PHP 75,000.00, exemplary damages in the amount of PHP 75,000.00, and temperate damages in the amount of PHP 50,000.00. He is also **ORDERED** to indemnify Charlotte Paculba, the amount of PHP 1,600.00, and Rachelle Buray, the amount of PHP 500.00.

The civil liabilities imposed herein are subject to interest at the rate of 6% per annum from the date of finality of this Resolution until fully paid.

**SO ORDERED.**" (J. M. Lopez, on official leave)

By authority of the Court:

  
TERESITA AQUINO TUAZON  
Division Clerk of Court 2/4  
15 FEB 2024

<sup>33</sup> 783 Phil. 806, 839 (2016) [Per J. Peralta, *En Banc*].

<sup>34</sup> *Id.* at 846–847.

<sup>35</sup> TSN, February 26, 2015, p. 7.

<sup>36</sup> TSN, March 2, 2016, p. 8.

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THE SUPERINTENDENT (reg)  
Davao Prison and Penal Farm  
B.E. Dujali, Davao del Norte

HON. PRESIDING JUDGE (reg)  
Regional Trial Court, Branch 44  
Initao, Misamis Oriental  
(Crim. Case No. 2007-1587)

COURT OF APPEALS (reg)  
Cagayan de Oro City  
CA-G.R. CR-HC No. 02060-MIN

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