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Welford Esguerra
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 Third Division

AUG 03 2016

Republic of the Philippines
Supreme Court
 Manila

THIRD DIVISION

PEOPLE OF THE PHILIPPINES,
 Plaintiff -Appellee,

G.R. No. 208527

Present:

VELASCO, JR., J.,
Chairperson,
 PERALTA,
 PEREZ,
 MENDOZA,* and
 REYES, JJ.

- versus -

ARDO BACERO y CASABON,
 Accused-Appellant.

Promulgated:

July 20, 2016

Welford Esguerra

X ----- X

DECISION

PEREZ, J.:

Before this court is an appeal of the July 26, 2012 Decision¹ of the Court of Appeals (CA) in CA-G.R. CR.- H.C. No. 05040 affirming the January 11, 2011 Decision² of the Regional Trial Court (RTC) of Antipolo City, Branch 73 in Crim. Case No. 03-25345, finding accused-appellant Ardo Bacero y Casabon (accused-appellant) guilty beyond reasonable doubt of the special complex crime of Robbery with Homicide as defined and penalized under Article 294, paragraph (1) of the Revised Penal Code, as amended by Section 9 of Republic Act No. 7659.

* Designated as Additional Member in lieu of Justice Francis H. Jardeleza per raffle dated July 4, 2016. (On Wellness Leave).

¹ *Rollo*, pp. 2-34; penned by Associate Justice Celia C. Librea- Leagogo, concurred by Associate Justices Franchito N. Diamante and Abraham B. Borreta.

² *CA Rollo*, pp. 10-14, penned by Judge Ronaldo B. Martin.

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On March 27, 2003, an Information³ for the special complex crime of Robbery with Homicide was filed against accused-appellant and several men whose true identities were unknown at the time of filing, namely, Victor Bisaya, Rodel, Rommel, John Doe and Peter Doe. The accusatory portion of the Information reads:

“That on or about the 24th day of March, 2003, in the Municipality of Taytay, Province of Rizal, Philippines, and within the jurisdiction of this Honorable Court, the above named accused, in conspiracy with @Victor Bisaya, @Rodel, @Rommel, @John Doe, @Peter Doe[,] whose true identities and whereabouts are still unknown, with the use of deadly bladed weapons, with intent to gain and by means of force, violence and intimidation, did then and there willfully, unlawfully and feloniously rob, take and divest one Virgilio San Juan[, Jr.] y Molina @Jun of his Nokia 3310 cellphone valued at Php4,500.00 and one Juliet Bunot y Dumdum of her Smart Buddy 3388 model cellphone valued at [P]2,400.00 and cash money amounting to [P]70.00, to the damage and prejudice of both offended parties in the total amount of Php6,970.00; that by reason and on the occasion of the robbery, the above-named accused, with intent to kill, and by means of the qualifying aggravating circumstances of treachery, evident premeditation and superior strength, did, then and there willfully, unlawfully and feloniously attack, assault and stab with said deadly bladed weapons, said Virgilio San Juan[, Jr.] y Molina @Jun, hitting him on the different parts of his body, thereby inflicting upon the victim mortal stabbed wounds which directly caused his death.

CONTRARY TO LAW.”⁴

On arraignment, accused-appellant entered a plea of NOT GUILTY.⁵ Trial on the merits ensued thereafter.

The Facts

The antecedent facts as culled from the Plaintiff-Appellee’s Brief⁶ and the records of the case are summarized as follows:

At around 4:45 o’clock in the afternoon of March 24, 2003, Juliet Dumdum-Bunot and her boyfriend, Virgilio “Jun” San Juan[, Jr., y Molina] were attacked by six men while they were having a small picnic at the Monteverde Royal Subdivision in Taytay, Rizal. One of the men, later identified as the accused-appellant, forcibly grabbed Jun’s cellphone after stabbing him on the face with a knife. Juliet was unable to help Jun as her face was being shoved down towards her thighs by one of accused-appellant’s companions. Every time Juliet fought back, the unidentified man punched her. Despite her struggle, Juliet could hear Jun shouting

³ Records, p. 1.

⁴ Id. at 1-2.

⁵ Id. at 25.

⁶ CA rollo, pp. 90-91.

“*Huwag po, huwag po, Diyos ko po*”. Juliet was restrained by one of the men; her face was covered with a towel and her hands were tied with another towel. Fortunately, according to Juliet, the towel was loosely tied and thin enough for her to see through it and identify the man who attacked her. When Juliet freed herself from the loosely tied towels, she immediately looked for Jun but he was nowhere to be found. She sought assistance from the Monteverde Royale Subdivision security guards. They roamed around the subdivision and saw Jun’s lifeless body in a grassy area.

At the police station later that day, Juliet Dumdum Bunot (Juliet) told Senior Police Officer 1 Rogelio V. Marundan (SPO1 Marundan), then Chief Investigator of Taytay Police, that two of the assailants’ faces were familiar to her but she was uncertain of their identities. She also mentioned that the face of one of the men who attacked Virgilio San Juan, Jr. y Molina (Jun) was familiar as she had seen him in the neighborhood. She identified said assailant as having long hair. Still distraught over the horrifying incident, Juliet was unable to remember the faces of the other assailants. She was advised to calm down and to head home. Two days after, Juliet informed Senior Police Officer 1 William S. Texon (SPO1 Texon) that she remembered one of the assailants. Juliet claimed that she was familiar with accused-appellant’s face because she used to see him three to four times a week whenever he was plying his tricycle route outside her house. According to the *Pinagsamang Sinumpaang Salaysay*⁷ executed by SPO1 Marundan, SPO1 Tecson and Police Officer 2 Manuelito Inosanto (PO2 Inosanto), a team of investigating officers and several civilian agents was formed for the purpose of conducting a follow-up investigation in the vicinity of Javier Compound, San Francisco Village, Muzon, Taytay, Rizal. During the conduct of the follow-up investigation, Juliet, accompanied by the investigating officers, spotted accused-appellant standing in front of his house and identified him as the long-haired assailant. The officers invited accused-appellant back to the police station. A police line-up was conducted and accused-appellant was positively identified by Juliet. Accused-appellant initially denied any involvement in the incident but after thirty minutes, he admitted to the robbery and the killing.⁸ He also gave the names and whereabouts of his companions, namely: Victor Waray, a certain Rodel and Rommel, and another man who was an acquaintance of Victor Waray.

On July 10, 2003, Juliet executed a supplemental affidavit⁹ for the purpose of identifying the other five assailants. Juliet implicated Victor “Waray” Magcuro (Victor), Rommel David (Rommel), Edwin Soberano y Dela Cruz (Edwin), Nelson Ampatin (Nelson) and Rodel Zacarias (Rodel). According to Juliet, she asked around for their respective names when she chanced upon the suspects having a drink outside a compound. Accused Edwin is a tricycle driver who knew Juliet since December 2002. On April

⁷ Records, pp. 18-19.

⁸ TSN, July 19, 2007, p. 11.

⁹ Records, p. 288; Exhibit “C”.

3, 2003, he was invited by the Taytay police for questioning but was immediately released by midnight of the same day. On October 23, 2003, he was arrested by virtue of a warrant. On January 11, 2011, the RTC eventually acquitted Edwin for lack of sufficient evidence to warrant his conviction.¹⁰

Accused-appellant proffers the defenses of alibi and denial. He posits that he was just a victim of mistaken identity and at the time the incident supposedly happened, he was in his house gathering wood. Moreover, accused-appellant claims that on the day he was arrested, he was forced to admit the crime after being tortured by the police.¹¹ Divina Esguerra Chiong (Chiong), a witness for the defense, executed an affidavit¹² dated April 8, 2003 claiming that she witnessed the incident from her sister's house, which was overlooking the scene of the crime, and that she is positive that accused-appellant was not one of the assailants.

The prosecution presented the testimony of Estella Arellano San Juan (Estella),¹³ widow of the deceased, to prove that the deceased was gainfully employed and to prove the damages and expenses incurred in relation to the death of Jun.

Ruling of the Regional Trial Court

The RTC ruled that Juliet was able to positively identify accused-appellant as one of the six persons who approached Jun and was in fact, the person who used a knife in stabbing Jun in the face. The trial court gave weight to the fact that Juliet was able to identify accused-appellant as one of the assailants as early as the day after the incident. The trial court held that the same categorical and straightforward identification cannot be said with respect to accused Edwin who was not immediately identified by Juliet despite the fact that he was already in police custody a little over a week after the incident. Edwin was only identified by Juliet when she executed her supplemental affidavit roughly 3 months after the incident. For the trial court, the fact that Edwin was arrested only on October 23, 2003 or 7 months after the incident makes his identification not quite similar to Juliet's identification of Bacero. The dispositive portion of the decision reads:

WHEREFORE, premises considered, accused Ardo Bacero y Garingo is hereby found GUILTY beyond reasonable [doubt] of the crime of Robbery with Homicide and is sentenced to suffer the penalty of *Reclusion Perpetua* and is ordered to pay the heirs of Virgilio San Juan[

¹⁰ Supra note 2.

¹¹ TSN, December 12, 2007, p. 12.

¹² Records, p. 314; Exhibit "4".

¹³ TSN, July 13, 2006, p. 2.



Jr. y Molina] [P]172,000.00 in actual damages, [P]200,000.00 in moral damages, [P]100,000.00 in exemplary damages with costs against suit.

Accused Edwin Soberano is **ACQUITTED** of the crime charged for lack of sufficient evidence to warrant his conviction. He is therefore ordered released from detention unless he is being detained for some other case or cause other than the instant case.

The case against Nelson Ampatin, Victor Magcoro, Rommel David and Rodel Zacarias is ordered archived and the corresponding warrant of arrest is hereby issued against them for their immediate apprehension.

SO ORDERED.¹⁴

Ruling of the Court of Appeals

Aggrieved by the RTC decision, accused-appellant elevated the case to the CA. Accused-appellant questioned Juliet's credibility and contended that her testimony anent the identity of the accused-appellant as one of the perpetrators is highly doubtful for the reason that her statements were contradictory. Relying on a previous case,¹⁵ the defense maintained that the fact that Juliet knew accused-appellant before the crime but made no accusation against him when questioned by the police is a danger signal indicating that identification may be erroneous.¹⁶ The appellate court found no cogent reason to deviate from the findings of the trial court. The CA gave deference to the trial court's appreciation of the facts and credibility of witnesses. The dispositive portion of the decision reads:

WHEREFORE, premises considered, the appeal is **DENIED**. The Decision dated 11 January 2011 of the Regional Trial Court, Fourth Judicial Region, Branch 73, Antipolo City in *Crim. Case No. 03-25345* finding accused-appellant Ardo Bacero y Casabon guilty beyond reasonable doubt of the crime of robbery with homicide under Article 294 (1) of the Revised Penal Code, as amended, and sentencing him to suffer the penalty of *reclusion perpetua* is **AFFIRMED** with **MODIFICATION** in that accused-appellant, in addition to the said penalty, is **not** eligible for parole and he is further ordered to indemnify the heirs of the victim Virgilio San Juan, Jr. y Molina the following amounts: (1) Php75,000.00 as civil indemnity; (2) Php75,000.00 as moral damages; (3) Php30,000.00 as exemplary damages; (4) Php75,871.30 as actual damages; (5) Php2,518,634.68 for loss of earning capacity; and (6) interest on all damages awarded at the rate of 6% *per annum* from the finality of this judgment until fully paid. Costs against accused-appellant.

SO ORDERED.¹⁷

¹⁴ CA rollo, p. 57.

¹⁵ *Lumanog, et al. v. People*, 644 Phil. 296, 399 (2010).

¹⁶ CA rollo, p. 48; Accused-Appellant's Brief.

¹⁷ Rollo, pp. 28-29.

Accused-appellant filed a Motion for Reconsideration of the July 26, 2012 Decision of the appellate court. Finding that the grounds relied upon in the said Motion were mere reiterations of the matters already considered passed upon, the CA denied the Motion for Reconsideration for lack of merit in a Resolution dated December 4, 2012. On December 26, 2012, accused-appellant appealed the Decision of the CA dated July 26, 2012. Accused-appellant's Notice of Appeal was given due course and the records were ordered elevated to this Court for review.¹⁸

In a Resolution¹⁹ dated October 9, 2013, this Court required the parties to submit their respective supplemental briefs. Both the OSG and the accused-appellant manifested that they are adopting all the arguments contained in their respective briefs in lieu of filing supplemental briefs.²⁰

Our Ruling

This Court finds no reason to deviate from the findings and conclusions of the courts below as the degree of proof required in criminal cases has been met in the case at bar. We rule that accused-appellant's contentions of mistaken identity, torture, and denial are bereft of merit.

Extra-judicial Confession

Accused-appellant claims that he was coerced into admitting the crime. We hold that his allegation of being subjected to torture does not find support in the evidence on record. There was no proof, such as a medical certificate, that would show that accused-appellant suffered bodily harm while under the custody of police officers. In previous cases, the Court has disregarded allegations of torture when the accused did not file any complaint against his alleged malefactors for maltreatment.²¹

Notwithstanding the fact that torture was not sufficiently proven, the extra-judicial confession made at the police station remains inadmissible in evidence. R.A. No. 7438, the law defining the rights of persons under custodial investigation, provides:

“Section 2. (d) – Any extrajudicial confession made by a person arrested, detained or under custodial investigation shall be in writing and signed by such person in the presence of his counsel or in the latter's absence, upon a valid waiver, and in the presence of any of the parents,

¹⁸ Id. at 191.

¹⁹ *Rollo*, p. 40.

²⁰ Id. at 42-43 & 47-49.

²¹ See *People v. Capille, et al.*, 654 Phil. 351, 361 (2011) and *People v. Continente*, 393 Phil. 367, 394 (2000).



elder brothers and sisters, his spouse, the municipal mayor, the municipal judge, district school supervisor, or priest or minister of the gospel as chosen by him; otherwise, such extrajudicial confession shall be inadmissible as evidence in any proceeding.”

The admission made by accused-appellant was neither put into writing nor made in the presence of persons mentioned in the law. Thus, there can be no conclusion other than that the extra-judicial confession is inadmissible in evidence. Nevertheless, the positive identification of accused-appellant as the perpetrator of the crime warrants his conviction.

Positive Identification of Accused-appellant

The defense maintains that Juliet’s testimony anent the identity of accused-appellant as one of the perpetrators is highly doubtful. Accused-appellant harps on the inconsistencies in Juliet’s statements regarding the suspects’ identities. We cannot sustain such argument casting doubt on Juliet’s positive identification of accused-appellant’s participation in the commission of the crime. Time and again, this Court has held that when the credibility of a witness is in issue, the trial court’s calibration of the testimonies of the witnesses and its assessment of the probative weight thereof, are accorded high respect if not conclusive effect, most especially when such findings are affirmed by the appellate court.²² Unless there is a clear showing that the trial court and the appellate court overlooked, misunderstood or misapplied some facts or circumstances of weight and substance, this rule should not be disturbed.²³

Jurisprudence is replete with various ways of conducting out-of-court identifications.²⁴ It may be done thru **show-ups**, where the suspect alone is brought face to face with the witness or thru **mug shots**, where only photographs are shown to the witness. Identification can also be done thru **line-ups** where a witness identifies the suspect from a group of persons.²⁵ To maintain the integrity of in-court identification during trial, courts have fashioned out rules to assure its fairness and compliance with the requirements of constitutional due process.²⁶ In a long line of cases, the Court has reiterated the **totality of circumstances test** adopted from American Jurisprudence and set forth in *People v. Teehanke, Jr.*,²⁷ which has been the guide in resolving the admissibility of out-of-court identification. Under the totality of circumstances test, the following factors are considered: (1) the witness’ opportunity to view the criminal at the time of the crime; (2) the witness’ degree of attention at that time; (3) the

²² *People v. Lugnasin, et al.*, G.R. No. 208404, February 24, 2016.

²³ *People v. Basao, et al.*, 697 Phil. 193, 209 (2012), citing *Decasa v. Court of Appeals*, 554 Phil. 160, 180 (2007).

²⁴ *People v. Teehanke, Jr.*, 319 Phil. 128, 181 (1995).

²⁵ *Id.* at 180.

²⁶ *Id.*

²⁷ *Id.*

accuracy of any prior description given by the witness; (4) the level of certainty demonstrated by the witness at the identification; (5) the length of time between the crime and the identification; and (6) the suggestiveness of the identification procedure.²⁸

Juliet identified accused-appellant out-of-court on two separate occasions, viz: (1) when she saw accused-appellant in front of the latter's house after roaming the vicinity and (2) at a police line-up conducted by SPO1 Tecson. We rule that the out-of-court identifications made by Juliet satisfied the totality of circumstances test. Juliet was at the scene of the crime when the incident happened and she was able to see the faces of the assailants through the loosely tied blindfold. Moreover, the most natural reaction of a witness to a crime is "to strive to look at the appearance of the perpetrator and to observe the manner in which the offense is perpetrated."²⁹ Most often, the face and body movements of the assailant create a lasting impression which cannot be easily erased from their memory.³⁰ We agree with the appellate court that eyewitnesses can remember with a high degree of reliability the identity of criminals at any given time precisely because of the unusual acts of violence committed right before their eyes.³¹ Though this Court is aware that such pronouncement should be applied with great caution, there is no compelling circumstance in this case that would warrant its non-application.

Accused-appellant contends that Juliet's description of the appellant as a man having long hair lacks the highest degree of certainty. We find this contention unmeritorious. The lack of a detailed description of the assailants should not lead to a conclusion that the identification was erroneous. Victims of violent crimes have varying reactions to shocking events. Juliet cannot be expected to immediately remember the detailed features of the assailants' faces as she was still in a state of shock. Though she was unable to describe in detail the appearances of the assailants, she was able to immediately identify Bacero when she saw him two days after the incident. Nevertheless, assuming for the sake of argument that Juliet's out-of-court identification was improper, it will have no bearing on the conviction of accused-appellant. It has long been settled that an out-of-court identification does not necessarily foreclose the admissibility of an independent in-court identification and that "even assuming that an out-of-court identification was tainted with irregularity, the subsequent identification in court cured any flaw that may have attended it."³² Furthermore, the records show that there is no improper motive for Juliet to impute a serious crime to the accused-appellant.³³

²⁸ Id.; see *Neil v. Biggers*, 409 US 188 [1973]; *Manson v. Brathwaite*, 432 US 98 [1977].

²⁹ *People v. Esoy, et al.*, 631 Phil. 547, 555 (2010).

³⁰ *People v. Apawan*, G.R. No. 85329, August 16, 1994, 235 SCRA 355, 363.

³¹ Id.

³² *People v. Sabangan*, 723 Phil. 591, 614 (2013).

³³ Supra note 11 at 16-17.

Unmeritorious Defense of Mistaken Identity

Accused-appellant posited the defense of mistaken identity which is essentially in the nature of denial and alibi. It is established jurisprudence that denial cannot prevail over the witnesses' positive identification of the accused-appellant; more so where the defense did not present convincing evidence that it was physically impossible for accused-appellant to have been present at the crime scene at the time of the commission of the crime.³⁴ We quote with approval the disquisition of the appellate court, to wit:

The defenses of denial and alibi are the weakest of defenses in criminal cases and the same are self-serving negative evidence. They cannot prevail over the spontaneous, positive, and credible testimony of the prosecution witness who pointed to and identified the accused-appellant as one of the malefactors. Moreover, for the defense of alibi to prosper, the requirements of time and place must be strictly met. It is not enough to prove that the accused was somewhere else when the crime was committed, but he must also demonstrate by clear and convincing evidence that it was physically impossible for him to have been at the scene of the crime at the time the same was committed. Accused-appellant's feeble denial and alibi crumble in the face of Juliet's affirmative testimony.

In accused-appellant's attempt to support his mistaken identity claim, the defense presented the testimony of Chiong, accused-appellant's long time friend. The RTC and CA correctly did not give credence to the testimony of Chiong. When a defense witness is a close friend, courts should view such testimony with skepticism,³⁵ more so when the same is uncorroborated, as in the case at bar.

Robbery with Homicide

The trial and appellate courts committed no error in convicting the accused-appellant of Robbery with Homicide. Section 9, Article 294, paragraph (1) of the Revised Penal Code, as amended by R.A. No. 7659, reads:

“ Art. 294 – 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.”

³⁴ *People v. Salcedo, et al.*, 667 Phil. 765, 775-776 (2011); citing *Lumanog v. People*, supra note 15.
³⁵ Cf. *People v. Villarino*, 628 Phil. 269, 285 (2010); citing *People v. Sumalinog, Jr.*, 466 Phil. 637, 650-651 (2004).

To warrant a conviction for Robbery with Homicide, the prosecution must prove the confluence of the following elements: (1) the taking of personal property with the use of violence or intimidation against a person; (2) the property taken thus belongs to another; (3) the taking is characterized by intent to gain or *animus lucrandi*; and (4) on occasion of the robbery or by reason thereof, the crime of homicide, which is used in a generic sense, was committed.³⁶ In proving Robbery with Homicide, it is necessary that the robbery itself be established conclusively as any other essential element of the crime.³⁷ In the instant case, the elaborate testimony of Juliet and her positive identification of accused-appellant as one of the assailants support the charge of the component offense of Robbery. In previous cases,³⁸ We had occasion to explain that intent to rob is an internal act but it may be inferred from proof of violent unlawful taking of personal property and when the fact of asportation has been established beyond reasonable doubt, conviction is justified even if the subject property is not presented in court. "After all, the property stolen may have already been abandoned, thrown away or destroyed by the robber."³⁹

As to the allegation of the presence of the aggravating circumstance of abuse of superior strength, we quote the ruling of the CA with approval, to wit:

"The trial court correctly appreciated the aggravating circumstance of abuse of superior strength. The aggravating circumstance of abuse of superior strength is considered whenever there is notorious inequality of forces between the victim and the aggressor that is plainly and obviously advantageous to the aggressor and purposely selected or taken advantage of to facilitate the commission of the crime. It is taken into account whenever the aggressor purposely used excessive force that is out of proportion to the means of defense available to the person attacked. The felonious acts of accused-appellant and the other malefactors of robbing and killing the victim were clearly executed with abuse of superior strength. Their combined force and physical strength overwhelmed the victim and left him defenseless. Accused-appellant struck with his knife the unarmed victim. The multiple stab wounds sustained by the victim indisputably show that the group of accused-appellant took advantage of their superior strength to perpetrate the crime."⁴⁰

In numerous cases,⁴¹ We held that when the killing is committed by reason of or on the occasion of the robbery, the qualifying circumstances attendant to the killing would be considered as generic aggravating circumstances. Thus, in the case at bar, the circumstance of abuse of superior strength serves to aggravate the crime.

³⁶ *People v. Consejero*, 404 Phil. 914, 932 (2001); citing *People v. Gamo*, 351 Phil. 944, 953-954 (1998).

³⁷ *People v. Dizon*, 394 Phil. 261, 283 (2000); citing *People v. Contega*, 388 Phil. 533, 549 (2000).

³⁸ *People v. De Leon*, 608 Phil. 701, 717 (2009); *People v. Puloc*, 279 Phil. 190, 197 (1991).

³⁹ *People v. Corre, Jr.*, 415 Phil. 386, 398 (2001)

⁴⁰ *Rollo*, p. 25.

⁴¹ *People v. Capillas, et al.*, 195 Phil. 64, 79, 80 (1981), *People v. Ang*, 223 Phil. 333, 340 (1985), *People v. Punzalan*, 280 Phil. 390, 410 (1991).

Penalty and Damages

Persons found guilty of committing the special complex crime of Robbery with Homicide are punishable with *reclusion perpetua* to death.⁴² Considering that the generic aggravating circumstance of abuse of superior strength was alleged in the information and proven during the trial, accused-appellant shall suffer the penalty of death pursuant to Article 63 of the Revised Penal Code, as amended.⁴³ Nonetheless, in light of R.A. No. 9346,⁴⁴ the penalty shall be reduced from death to *reclusion perpetua* without eligibility for parole.

Applying the adjusted amounts for damages laid down in the recently decided case of *People v. Jugueta*,⁴⁵ We modify the damages awarded by the trial and appellate courts. Accused-appellant shall be liable to the heirs of the deceased for civil indemnity in the amount of ₱100,000.00, as the imposable penalty would have been death, were it not for the enactment of R.A. No. 9346. Accused-appellant shall also be liable for moral damages in the amount of ₱100,000.00 and exemplary damages in the amount of ₱100,000.00.

In awarding actual damages amounting to ₱172,000.00, the RTC erroneously included amounts stated in handwritten lists of expenses,⁴⁶ which were self-serving. A receipt dated months after the death of the victim⁴⁷ was also erroneously included in the computation of actual damages awarded by the trial court. Time and again, this Court has held that only expenses supported by receipts and which appear to have been actually expended in connection with the death of the victims may be allowed.⁴⁸ Only substantiated expenses and those which appear to have been genuinely incurred in connection with the death, wake or burial of the victim will be

⁴² REVISED PENAL CODE, Art. 294(1).

⁴³ Art. 63. Rules for the Application of Indivisible Penalties.- In all cases in which the law prescribes a single indivisible penalty, it shall be applied by the courts regardless of any mitigating or aggravating circumstances that may have attended the commission of the deed.

In all cases in which the law prescribes a penalty composed of two indivisible penalties, the following rules shall be observed in the application thereof:

1. When in the commission of the deed there is present only one aggravating circumstance, the greater penalty shall be applied.
2. When there are neither mitigating nor aggravating circumstances and there is no aggravating circumstance, the lesser penalty shall be applied.
3. When the commission of the act is attended by some mitigating circumstances and there is no aggravating circumstance, the lesser penalty shall be applied.
4. When both mitigating and aggravating circumstances attended the commission of the act, the court shall reasonably allow them to offset one another in consideration of their number and importance, for the purpose of applying the penalty in accordance with the preceding rules, according to the result of such compensation.

⁴⁴ An Act Prohibiting the Imposition of Death Penalty in the Philippines.

⁴⁵ G.R. No. 202124, April 5, 2016.

⁴⁶ Records, pp. 300-304, 306-307; Exhibits "K-1" to "K-4".

⁴⁷ Id. at 305; Exhibit "K-5".

⁴⁸ *People v. Salibad*, G.R. No. 210616, November 25, 2015.

recognized by the courts.⁴⁹ This Court has repeatedly held that self-serving statements of account are not sufficient basis for an award of actual damages. To justify an award of actual damages, it is necessary for the claimant to produce competent proof and the best evidence obtainable. Verily, “a list of expenses cannot replace receipts when the latter should have been issued as a matter of course in business transactions.”⁵⁰ The CA, on the other hand, erroneously excluded in the computation for actual damages the amount stated in an unofficial receipt⁵¹ issued by George & Elvie Store. The said tape receipt issued by the store, though unofficial because of the absence of a TIN number, contained material particulars such as the date of the transaction, the place of transaction, the items purchased, and the cost of items purchased. To the mind of this Court, the same constitutes competent proof. The heirs of the victims, as claimants, should not be prejudiced by the store’s failure to issue official receipts.

All in all, an examination of the records reveals that the following competent proofs of expenses incurred in connection with the death, wake and burial of the victim were submitted:

Official Receipt dated March 30, 2003, issued by Kairiz Funeral Service (Exhibit I)	P45,000.00
Official Receipt dated April 01, 2003, issued by Our Lady of Light Parish (Exhibit J)	P27,000.00
Official Receipt dated April 06, 2003, issued by Pilipinas Makro, Inc. (Exhibit K)	P2,842.05
Official Receipt dated April 9, 2003, issued by Ever Shoppers Inc. Supermarket ⁵²	P1,029.25
Receipt dated March 28, 2003, issued by George & Elvie Store ⁵³	P89.00
TOTAL	P75,960.30

Based on the foregoing, accused-appellant shall be liable to the heirs of the victim for the amount of P75,960.30 as actual damages.

Lastly, the heirs of the victim are likewise entitled to indemnity for loss of earning capacity⁵⁴ amounting to P2,519,405.86. Such indemnification partakes of the nature of actual damages and thus, must be

⁴⁹ *People v. Jamiro*, 344 Phil. 700, 722 (1997).

⁵⁰ *People v. Mamaruncas, et al.*, 680 Phil. 192, 213-214 (2012); citing *People v. Guillera, et al.*, 601 Phil. 155, 166 (2009).

⁵¹ Records, p. 309.

⁵² Id. at 308.

⁵³ Supra note 51.

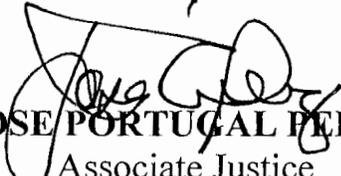
⁵⁴ CIVIL CODE, Art. 2206.

duly proven by competent proof.⁵⁵ Estella, wife of the victim, testified on the income of her husband and presented documentary evidence to show that her husband was gainfully employed at the time of his death. A Certification dated July 03, 2006⁵⁶ issued by Mitsubishi Motors Philippines Corporation was presented to prove that the victim was employed in the said company as a regular sealing man with a salary rate of P80.33/hour. Pursuant to jurisprudence,⁵⁷ such certification shall be considered as sufficient basis for a fair and reasonable computation of the victim's loss of earning capacity. Loss of earning capacity is computed as follows:

$$\begin{aligned}
 \text{Net Earning Capacity} &= \text{Life expectancy} \times [\text{Gross Annual Income} - \text{Living Expenses}] \\
 &= [2/3 (80 - \text{age at death})] \times [\text{GAI} - 50\% \text{ of GAI}] \\
 &= [2/3 (80 - 31^{58})] \times [P154,233.60^{59} - P77,116.80] \\
 &= [2/3 (49)] \times P77,116.80 \\
 &= 32.67 \times P77,116.80 \\
 &= P2,519,405.86
 \end{aligned}$$

WHEREFORE, the decision of the Court of Appeals in CA-G.R. CR.-H.C. No. 05040 dated July 26, 2012 is hereby **AFFIRMED WITH MODIFICATION**. Accused-appellant Ardo Bacero y Casabon is found **GUILTY** beyond reasonable doubt of Robbery with Homicide and sentenced to suffer the penalty of *Reclusion Perpetua* without eligibility for parole and ordered to pay the heirs of Virgilio M. San Juan, Jr. the amounts of P100,000.00 as civil indemnity, P100,000.00 as moral damages, P100,000.00 as exemplary damages, P75,960.30 as actual damages, and P2,519,405.86 as indemnity for loss of earning capacity. All monetary awards for damages shall earn interest at the legal rate of 6% per annum from the date of finality of this judgment until fully paid.

SO ORDERED.


JOSE PORTUGAL PEREZ
 Associate Justice

WE CONCUR:

⁵⁵ *Da Jose, et al. v. Angeles, et al.*, 720 Phil. 451, 463 (2013).

⁵⁶ Records, p. 294; Exhibit "G".

⁵⁷ *People v. Lopez*, 658 Phil. 647, 651 (2011).

⁵⁸ Records, p. 310.

⁵⁹ Supra note 56; the hourly salary rate of P80.33/hour was multiplied by 8 working hours in a day. The product of P642.64 was multiplied by 20 working days in a month, yielding a monthly salary rate of P12,852.80. The monthly rate was then multiplied by 12 working months to arrive at a gross annual income of P154,233.60.

[Signature]
PRESBITERO J. VELASCO, JR.
 Associate Justice
 Chairperson

[Signature]
DIOSDADO M. PERALTA
 Associate Justice

(On Wellness Leave)
JOSE C. MENDOZA
 Associate Justice

[Signature]
BIENVENIDO L. REYES
 Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

[Signature]
PRESBITERO J. VELASCO, JR.
 Associate Justice
 Third Division, Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

CERTIFIED TRUE COPY
[Signature]
WILFREDO V. LAPITAN
 Division Clerk of Court
 Third Division

[Signature]
MARIA LOURDES P. A. SERENO
 Chief Justice

AUG 09 2016