



Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff-appellee,

G.R. No. 181474

Present:

-versus-

CARPIO, J., Chairperson,
PERALTA,
MENDOZA,
LEONEN, and
MARTIRES, JJ.

ROMALDO LUMAYAG Y DELA
CRUZ, DIONY OPINIANO Y
VERANO, AND JERRY¹ DELA
CRUZ Y DIAZ,
Accused,

DIONY OPINIANO Y VERANO,
Accused-appellant.

Promulgated:
26 JUL 2017

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DECISION

LEONEN, J.:

This resolves the appeal filed by Diony Opiniano y Verano (Opiniano) under Rule 124, Section 13(c)² of the Revised Rules of Criminal Procedure,

¹ "Jerry" is spelled as "Gerry" in his Certificate of Live Birth (RTC records, p. 226). However, the Regional Trial Court Decision (CA rollo, p. 55) and the Court of Appeals Decision (Rollo, p. 3) used the name "Jerry".

² RULES OF COURT, Rule 124, sec. 13(c), as amended by A.M. No. 00-5-03-SC, provides:
RULE 124. PROCEDURE IN THE COURT OF APPEALS

....
SEC. 13. Certification or appeal of case to the Supreme Court. — . . .

....
(c) In cases where the Court of Appeals imposes *reclusion perpetua*, life imprisonment or a lesser penalty, it shall render and enter judgment imposing such penalty. *The judgment may be appealed to the Supreme Court by notice of appeal filed with the Court of Appeals.* (Emphasis supplied)

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from the Decision³ dated July 31, 2007 of the Court of Appeals affirming his conviction for the special complex crime of robbery with homicide.⁴

In the Information⁵ dated December 3, 1997, Opiniano,⁶ Romaldo Lumayag (Lumayag), and Jerry Dela Cruz (Dela Cruz) were charged with the crime of robbery with homicide:

That on or about the 29th day of November 1997, in Quezon City, Philippines, the said accused, conspiring together, confederating with and mutually helping one another, with intent of gain and by means of force, violence and intimidation against persons, to wit: by entering the residence of Eladio Santos y Gutierrez and Leonor Santos y Reyes located at No. 548 Tahimik St., Pag-ibig sa Nayon, this City, and once inside for the purpose of enabling said accused, to take, steal and carry away cash money from the house of said Eladio Santos y Gutierrez and Leonor Santos y Reyes, the said accused with intent to kill and taking advantage of their superior strength, did then and there, wilfully, unlawfully, feloniously and treacherously attack, assault and employ personal violence upon said Eladio Santos y Gutierrez and Leonor Santos y Reyes, by stabbing them repeatedly with the use of bladed weapons and big wooden stick, hitting them on the different parts of their bodies, thereby inflicting upon them mortal wounds which were the direct and immediate cause of their deaths and thereafter, the said accused pursuant to their conspiracy, with intent of gain, did then and there, wilfully, unlawfully and feloniously take, steal and carry away

One (1) bag containing money in different denominations amounting to ₱5,139.00, more or less with some paper bills, black leather belt, wallet with ID, sleeveless green shirt, Marlboro cigarettes, and three (3) lighters and bids [sic] of rosary,

One (1) pair of gold earrings with diamond,

Two (2) pieces of coins roughing [sic] paper with markings,

One (1) [C]itizen watch worth ₱1,500.00

One (1) gold ring with big stone (brillante) worth ₱55,000.00,

One (1) gold ring with small stone (brillante) worth ₱15,000.00,

One (1) pair of earrings with diamonds worth ₱5,000.00,

One (1) pair of earrings with pearl worth ₱20,000.00,

³ *Rollo*, pp. 3–24. The Decision was penned by Associate Justice Ramon R. Garcia and concurred in by Associate Justices Josefina Guevara-Salonga and Jose C. Reyes, Jr. of the Special Twelfth Division, Court of Appeals, Manila.

⁴ *Id.* at 24.

⁵ *CA rollo*, pp. 21–23.

⁶ The name indicated in the Information was Diony Penano. However, “Penano” was later changed to “Opiniano” upon motion of Atty. Raul Rivera, counsel for the three accused, during trial (*CA rollo*, p. 57, Regional Trial Court Decision).

from the house of said Eladio Santos y Gutierrez and Leonor Santos y Reyes, to the damage and prejudice of the heirs of Eladio Santos y Gutierrez and Leonor Santos y Reyes.

CONTRARY TO LAW.⁷

The three (3) accused pleaded not guilty during their arraignment on January 12, 1998. No stipulations of fact were entered during pre-trial. Joint trial ensued.⁸

The prosecution presented Honorata S. Estrella (Estrella), daughter of the victims; PO2 Rodolfo Paule (PO2 Paule) of the Caloocan Police Station; SPO2 Rolando Ko (SPO2 Ko), PO3 Alberto Gomez, Jr. (PO3 Gomez), and PO2 Ferdinand Flores (PO2 Flores) of the La Loma Police Station; National Bureau of Investigation Medico-Legal Officer Dr. Floresto Arizala, Jr. (Dr. Arizala); and National Bureau of Investigation Forensic Biologist I Pet Byron T. Buan (Forensic Biologist Buan) as witnesses.⁹ On the other hand, the defense presented Dela Cruz and Opiniano as witnesses.¹⁰

Evidence for the prosecution established the following facts:

On November 30, 1997, at around 2:30 a.m., spouses Eladio Santos (Eladio) and Leonor Santos (Leonor) were found dead in the garage of their house at No. 548 Tahimik St., Brgy. Pag-ibig sa Nayon, Quezon City.¹¹ At the time of the incident, Eladio was 72 years old while Leonor was 71 years old.¹²

The Spouses Santos were dealers of soft drinks and beer. They maintained a store, adjacent to their two-storey house which sold other commodities such as rice, cigarettes, and canned goods. Their daughter, Estrella, helped manage the store daily from 8:00 a.m. or 9:00 a.m. to 3:00 p.m. or 4:00 p.m.¹³ Dela Cruz was their stay-in helper. He had been working for them for only three (3) to five (5) days before the couple were killed.¹⁴

⁷ CA rollo, pp. 21-22, Information.

⁸ Id. at 57, Regional Trial Court Decision.

⁹ Rollo, pp. 6-7, Court of Appeals Decision.

¹⁰ Id. at 11-12.

¹¹ CA rollo, p. 57, Regional Trial Court Decision, and TSN, January 28, 1998, p. 4, Testimony of Honorata S. Estrella.

¹² CA rollo, p. 57, Regional Trial Court Decision.

¹³ TSN, January 28, 1998, pp. 4-6, Testimony of Honorata S. Estrella.

¹⁴ TSN, January 28, 1998, pp. 4-6, Testimony of Honorata S. Estrella, and TSN, March 4, 1998, p. 7, Testimony of Honorata S. Estrella.

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Around 2:30 a.m. of November 30, 1997, Estrella received a call from her sister that their parents were stabbed. She and her husband hurriedly went to the store. They noticed policemen and reporters waiting outside the store. When she entered the garage, Estrella saw the bloodied and dead bodies of her parents, while the police took pictures of the victims. She saw the store and the house in disarray. She noticed that cigarettes, lighters, coins, and bills were missing.¹⁵ Estrella remembered wrapping some coins and signing her initials on them for eventual bank deposit.¹⁶

When she went up to the second floor, she found the master bedroom in shambles, and noticed that some money and her mother's pieces of jewelry were missing. The missing pieces of jewelry were a watch worth ₱1,500.00, a ring with a big diamond stone worth more than ₱55,000.00, a ring with small diamonds worth at least ₱15,000.00, a pair of earrings with a Russian diamond worth ₱5,000.00, and a pair of pearl earrings worth ₱20,000.00. Estrella estimated that the total cash missing amounted to ₱100,000.00.¹⁷ She also noticed that the kitchen knife was missing.¹⁸ It had a "black rubber band wrapped around the handle[.]"¹⁹ She later found the knife full of blood inside a case of beer. The knife was turned over to the La Loma police.²⁰

Around 9:00 p.m. of the previous day, November 29, 1997, PO2 Paule and SPO1 Eduardo Roderno (SPO1 Roderno) of the Caloocan police were traversing C-3 Road aboard a police-marked vehicle when they noticed a man carrying a heavy-looking bag. When they approached him, the man ran away. After a brief chase, the man was cornered. PO2 Paule noticed that he was nervous and sweating. His right leg was stained with blood and his right waistline was bulging with an object, which turned out to be a double bladed 9-inch mini kris.²¹ He did not answer when asked about the bloodstain on his leg.²²

They brought him to the police station where he identified himself as Jerry Dela Cruz.²³ The bag yielded three (3) reams of Marlboro cigarettes, a lighter, some coins, and a blue denim wallet with cash in different denominations amounting to ₱1,470.00. PO2 Paule also noticed that the ₱500.00 bill in the wallet was stained with fresh blood.²⁴

¹⁵ TSN, January 28, 1998, pp. 6–10, Testimony of Honorata S. Estrella.

¹⁶ Id. at 13.

¹⁷ Id. at 10–13.

¹⁸ Id. at 12.

¹⁹ Id.

²⁰ Id.

²¹ TSN, April 1, 1998, pp. 7–9, Testimony of PO2 Rodolfo Paule, TSN, July 21, 1998, p. 7, Testimony of PO2 Rodolfo Paule, and *CA rollo*, p. 68, Regional Trial Court Decision.

²² TSN, April 1, 1998, p. 9, Testimony of PO2 Rodolfo Paule.

²³ The TSN, April 1, 1998 spells his name as "Gerry", while other parts of the RTC records spell his name as "Jerry."

²⁴ TSN, April 1, 1998, pp. 11–14, Testimony of PO2 Rodolfo Paule.

Upon further interrogation, Dela Cruz verbally confessed that he and his companions, whom he later revealed as “Ango” or Lumayag,²⁵ and Opiniano,²⁶ “had just killed and robbed an old couple.”²⁷ He was supposed to bring the contents of the bag to his cohorts in the illegal settlers’ area in Malabon.²⁸ During cross-examination, PO2 Paule affirmed that Dela Cruz was not aided by a lawyer, nor was his confession reduced into writing. PO2 Paule further testified that when they informed Dela Cruz of his right to a lawyer, the latter remained silent.²⁹

Dela Cruz then accompanied the police officers to the scene of the crime. When they peeped through the gate, using a search light, they saw a “female lying on the floor,”³⁰ covered with blood.³¹ They called the La Loma Police Station, which had jurisdiction over the case.³² PO2 Paule and the other Caloocan police operatives, together with Dela Cruz, then proceeded to Letre, Malabon where they were able to apprehend Opiniano.³³

SPO2 Ko, the officer on duty at Station 1, Mayon, La Loma, Quezon City at that time, was assigned to investigate the case. When he arrived at the crime scene at around 3:00 a.m. of November 30, 1997, members of the Scene of the Crime Operative led by a certain Lt. Pelotin, and members of media and barangay tanods were already in the area.³⁴ Estrella also arrived.³⁵

Upon the arrival of a barangay official, the gate was opened.³⁶ SPO2 Ko saw Leonor “sprawled on the ground leaning on the wall of the garage and . . . [Eladio] was placed on top of a bicycle[.]”³⁷ Both were dead. He also saw that “[t]he store was forcibly opened and some of the store articles were disarranged.”³⁸ Inside the house, he found one (1) of the rooms in the second floor ransacked and in total disarray. He requested the Scene of the Crime Operative team, which took pictures of the crime scene,³⁹ to bring the bodies of the victims to the morgue for appropriate autopsy by the National Bureau of Investigation. He proceeded to the Caloocan police precinct where he saw Dela Cruz and Opiniano.⁴⁰

²⁵ TSN, July 21, 1998, p. 16, Testimony of PO2 Rodolfo Paule, TSN, August 11, 1998, p. 7, Testimony of PO2 Ferdinand Flores, and TSN, September 29, 1998, pp. 4–5, Testimony of PO2 Ferdinand Flores.

²⁶ TSN, April 1, 1998, pp. 22–23, Testimony of PO2 Rodolfo Paule.

²⁷ TSN, April 1, 1998, p. 15, Testimony of PO2 Rodolfo Paule.

²⁸ Id. at 14–15.

²⁹ TSN, July 21, 1998, pp. 10–11, Testimony of PO2 Rodolfo Paule.

³⁰ TSN, April 1, 1998, p. 16, Testimony of PO2 Rodolfo Paule.

³¹ Id.

³² Id. at 17.

³³ Id. at 22–23.

³⁴ TSN, February 11, 1998, pp. 3–4, Testimony of SPO2 Rolando Ko.

³⁵ Id. at 5.

³⁶ Id. at 4–5.

³⁷ Id. at 5.

³⁸ Id. at 4.

³⁹ Id.

⁴⁰ Id. at 5.

The Caloocan police turned over to SPO2 Ko the multi-colored bag with its contents and the mini-kris that were recovered from Dela Cruz. SPO2 Ko brought the bloodstained bills, the mini-kris, and the knife found by Estrella to the National Bureau of Investigation for testing of human blood.⁴¹ He did not take the fingerprints of the accused or submit the items for fingerprinting at the Philippine National Police Crime Laboratory before submitting them to the National Bureau of Investigation because he thought it was no longer necessary.⁴²

SPO2 Ko brought Dela Cruz and Opiniano to the La Loma Police Station for further investigation.⁴³ PO3 Gomez conducted the body search on the suspects. As Opiniano was undressing, a pair of earrings dropped to the floor.⁴⁴ When asked whose they were, Opiniano replied that they belonged to a distant relative.⁴⁵

About 1:00 p.m. on November 30, 1997, PO2 Flores and other La Loma police officers, together with Dela Cruz, were dispatched to Kaysikat, Antipolo, Rizal where they arrested Lumayag.⁴⁶ When Lumayag was frisked, two (2) coin wrappers bearing initials were found inside his pocket.⁴⁷ Estrella later identified the initials in the coin wrappers as hers.⁴⁸

Dr. Arizala, the medico-legal officer of the National Bureau of Investigation who conducted the autopsies of the victims, testified that Eladio suffered 14 incised wounds, two (2) contusions, one (1) abrasion, and five (5) stab wounds.⁴⁹ On the other hand, Leonor sustained 28 incised wounds, a contusion, five (5) abrasions, two (2) lacerations, and three (3) stab wounds.⁵⁰ Dr. Arizala said that the incised wounds could have been caused by a knife while the numerous wounds could be attributed to more than one (1) assailant.⁵¹ He also found that the stab wounds sustained by the victims were mostly fatal.⁵²

⁴¹ Id. at 7-8.

⁴² TSN, February 18, 1998, pp. 16-17, Testimony of SPO2 Rolando Ko.

⁴³ TSN, February 11, 1998, p. 9, Testimony of SPO2 Rolando Ko.

⁴⁴ RTC records, p. 302, Affidavit of Apprehension of PO3 Alberto Gomez, Jr.

⁴⁵ TSN, March 25, 1998, pp. 7-8, Testimony of PO3 Alberto Gomez, Jr.

⁴⁶ TSN, August 11, 1998, pp. 5-8, Testimony of PO2 Ferdinand Flores, and TSN, September 29, 1998, pp. 3-4, Testimony of PO2 Ferdinand Flores.

⁴⁷ TSN, August 11, 1998, pp. 8-9, Testimony of PO2 Ferdinand Flores.

⁴⁸ TSN, February 11, 1998, p. 9, Testimony of SPO2 Rolando Ko, and TSN, October 6, 1998, pp. 4-5 and 8, Testimony of Honorata S. Estrella.

⁴⁹ TSN, February 25, 1998, pp. 30 and 34-46, Testimony of Dr. Floresto Arizala, Jr.

⁵⁰ Id. at 52-53.

⁵¹ Id. at 36 and 55-56.

⁵² Id. at 43-45 and 58-60.

Forensic Biologist Buan testified that he had examined the blood on the knives and peso bills recovered by the police, and his findings, which were all stated in his Biology Report No. B-97-1349,⁵³ were as follows:⁵⁴

Specimen	Result
1. One (1) bladed weapon about 12" inches long including its rubberized handle.	POSITIVE RESULTS for the presence of [h]uman blood showing the reaction of Group "B".
2. One (1) curved bladed weapon about 9" inches long including its handle with improvised holster.	NEGATIVE RESULTS for the presence of [h]uman blood.
3. One (1) ₱500.00 peso bill.	POSITIVE RESULTS for the presence of [h]uman blood showing the reactions of Group "B".
4. Nine (9) ₱100.00 peso bills.	POSITIVE RESULTS for the presence of [h]uman blood showing the reactions of Group "O".
5. Two (2) ₱50.00 peso bills.	POSITIVE RESULTS for [h]uman blood showing the reaction of Group "B". ⁵⁵

Forensic Biologist Buan further testified that he had also examined the fresh blood sample of Leonor and Eladio. His examination showed that Leonor's blood belonged to group type "O," while that of Eladio belonged to group type "B."⁵⁶

On the other hand, the defense presented their version of the facts as follows:

Dela Cruz, who at the time of the commission of the crime was only 16 years old,⁵⁷ testified that he was employed on November 25, 1997 by the victims, whom he called Lolo and Lola. On November 26, 1997, Lumayag, his first cousin,⁵⁸ visited him at his employer's house. Lumayag borrowed from him ₱50.00 to buy food. The following day, November 27, 1997, Lumayag visited him again to ask for cigarettes. Before leaving, however, Lumayag disclosed that he would come back on November 29, 1997 to rob

⁵³ RTC records, p. 285.

⁵⁴ TSN, February 25, 1998, pp. 2 and 11–22, Testimony of Pet Byron T. Buan.

⁵⁵ RTC records, p. 285, Biology Report No. B-97-1349. The 12-inch bladed weapon with rubberized handle was marked as Exhibit "K", the 9-inch bladed weapon with improvised holster was marked as Exhibit "L", the ₱500.00 peso bill was marked as Exhibit "M", the ₱100.00 peso bills were marked as Exhibit "N", the ₱50.00 peso bills were marked as Exhibit "O" (TSN, February 25, 1998, pp. 12–14, Testimony of Pet Byron T. Buan).

⁵⁶ TSN, February 25, 1998, pp. 22–24, Testimony of Pet Byron T. Buan.

⁵⁷ RTC records, p. 226, Certificate of Live Birth of Gerry Diaz Dela Cruz. Gerry was born on July 28, 1981.

⁵⁸ TSN, November 17, 1998, p. 2, Testimony of Romaldo Lumayag.

his employer's house.⁵⁹ When Dela Cruz dissuaded Lumayag from his plans, the latter merely replied, "*Bahala ka, pupunta rin ako dyan.*"⁶⁰

Around 8:00 p.m. of November 29, 1997, Dela Cruz was eating in the kitchen when he heard Leonor shouting for help. When he went out of the kitchen, he saw Lumayag holding Leonor by the neck.⁶¹ When he asked Lumayag, "*Bakit ganon?*"⁶² the latter responded, "*Wala kang pakialam. Lakad namin ito.*"⁶³

While Leonor was being held by Lumayag, Eladio "came out of the room [in the lower portion of the house], he went inside the store [and] took a knife."⁶⁴ When Eladio came out of the store, Lumayag threw Leonor to Opiniano, grabbed the knife from Eladio, and stabbed Eladio several times. Dela Cruz just stood by in fear. He attempted to stop Lumayag, but the latter threatened him. As Eladio fell, Dela Cruz turned around and saw Leonor already dead. Opiniano stabbed her with a knife.⁶⁵

Lumayag then went upstairs and came down carrying money in paper bills. He counted the money, which amounted to ₱25,000.00, and pocketed them.⁶⁶ He then went to the store, took the paper-wrapped coins from the drawer,⁶⁷ and placed them inside Dela Cruz's bag.⁶⁸ He also searched Leonor and got money from her. Likewise, he took Eladio's wallet and placed the money in the wallet.⁶⁹

Lumayag then directed Dela Cruz to go with them.⁷⁰ Dela Cruz told them, "*Patayin n'yo na lang ako; wala ng iba; madadamay din ako.*"⁷¹ Lumayag answered him, "*Hindi kita papatayin pero sumama ka na lang sa akin.*"⁷² Dela Cruz told him that he would think it over. Lumayag then instructed Dela Cruz to bring the money to Letre, Malabon or else he would kill him.⁷³

⁵⁹ TSN, June 15, 1999, pp. 8–13, Testimony of Jerry Dela Cruz, and TSN, July 20, 1999, pp. 13–16, Testimony of Jerry Dela Cruz.

⁶⁰ Id. at 16.

⁶¹ Id. at 19–21.

⁶² Id. at 21.

⁶³ Id.

⁶⁴ TSN, June 15, 1999, p. 22, Testimony of Jerry Dela Cruz, and TSN, August 4, 1999, pp. 3–4, Testimony of Jerry Dela Cruz.

⁶⁵ TSN, June 15, 1999 pp. 22–27, Testimony of Jerry Dela Cruz,

⁶⁶ Id. at 28–30.

⁶⁷ Id. at 30.

⁶⁸ Id.

⁶⁹ Id. at 31.

⁷⁰ Id. at 32–33.

⁷¹ Id. at 33.

⁷² Id.

⁷³ Id. at 33–34.

After the two (2) had left, Dela Cruz also left for Letre, but was caught by the Caloocan police officers upon reaching Monumento.⁷⁴

For his part, Opiniano put up the defense of denial and alibi. He testified that when he was arrested on the night of November 29, 1997, he was babysitting his cousin Manang Ligaya Verano's child at her house in Letre, Malabon.⁷⁵ He did not know the victims or why Dela Cruz, who was his town mate from Samar, implicated him in the crime.⁷⁶

On February 8, 2000, Branch 76, Regional Trial Court, Quezon City rendered a Decision,⁷⁷ which found Opiniano and Lumayag guilty as principals of the crime of robbery with homicide and imposed upon them the penalty of *reclusion perpetua*. On the other hand, the trial court found Dela Cruz as an accessory to the crime and imposed upon him an indeterminate prison sentence of two (2) years, four (4) months, and one (1) day to four (4) years and two (2) months of *prision correccional*.⁷⁸ The dispositive portion of the decision read:

WHEREFORE, finding the accused Romaldo Lumayag and Diony Opiniano guilty beyond reasonable doubt as principals in conspiracy with each other, for the crime of robbery with homicide described and penalized under Art. 294 of the Revised Penal Code, as amended by RA 7659 there being no modifying circumstance, and applying Art. 63 par. 2 of the Revised Penal Code, they are hereby sentenced to each suffer imprisonment of reclusion perpetua. Also, finding the accused Jerry dela Cruz guilty beyond reasonable doubt as accessory for the crime of robbery with homicide, with the mitigating circumstance of minority, and applying the Indeterminate Sentence Law, he is hereby sentenced to suffer imprisonment of two years[,] 4 months and 1 day to 4 years and 2 months of *prision correccional*.

As to the civil liability, the accused Romaldo Lumayag and Diony Opiniano are ordered to indemnify the heirs of Eladio Santos and Leonor Santos, jointly and solidarily as follows:

1. The amount of P80,000.00 as their share in the civil indemnity for the death of the two victims;
2. The amount of P80,000.00 as their share in the moral damages for death of the two victims;
3. The amount of P134,775.00 as their share in the actual damages for the expenses incurred as a result of their death;

⁷⁴ Id. at 34–36.

⁷⁵ TSN, December 1, 1998, pp. 3–8 and 10–11, Testimony of Diony Opiniano, and TSN, January 19, 1999, pp. 6–8, Testimony of Diony Opiniano.

⁷⁶ TSN, December 1, 1998, p. 15, Testimony of Diony Opiniano, and TSN, January 12, 1999, pp. 3–11, Testimony of Diony Opiniano.

⁷⁷ CA *rollo*, pp. 55–76. The Decision was penned by Judge Monina A. Zenarosa.

⁷⁸ Id. at 75.

4. The amount of P81,500 representing their share in the reimbursement of the value of the pieces of jewelry taken during the robbery.

As to the civil liability of Jerry dela Cruz who was found guilty as accessory, he is also ordered to indemnify the heirs of Eladio and Leonor Santos as follows:

1. [T]he amount of P20,000.00 as his share in the civil indemnity for the two victims;

2. The amount of P20,000.00 as his share in the moral damages;

3. The amount of P20,000.00 as his share in the actual damages;

4. The amount of P10,000.00 as his share in the reimbursement for the articles taken.

The earrings recovered has already been returned to the Santos heirs. The cash in bills and coins in the amount of P5,000.00 more or less and the reams of Marlboro cigarettes are ordered returned to the heirs of Eladio and Leonor Santos.

SO ORDERED.⁷⁹ (Underscoring in the original)

Only Opiniano appealed the Regional Trial Court's decision.⁸⁰ In view of *People v. Mateo*,⁸¹ this Court referred the case to the Court of Appeals for intermediate review.⁸²

On July 31, 2007, the Special Twelfth Division of the Court of Appeals affirmed in *toto*⁸³ the Regional Trial Court's decision. According to the Court of Appeals, the direct testimony of Dela Cruz admitting their participation in the crime and Opiniano's possession of the stolen items were clear proofs of his involvement in the crime.⁸⁴ Thus:

WHEREFORE, premise[s] considered the **Appeal** is **DISMISSED**. The Decision dated February 8, 2000 of the Regional Trial Court, Branch 76, Quezon City is **AFFIRMED IN TOTO**.

SO ORDERED.⁸⁵ (Emphasis in the original)

⁷⁹ Id. at 75-76.

⁸⁰ RTC records, p. 267, Regional Trial Court Order.

⁸¹ 477 Phil. 752, 770-773 (2004) [Per J. Vitug, En Banc].

⁸² *Rollo*, pp. 4-5, Court of Appeals Decision.

⁸³ Id. at 3-24.

⁸⁴ Id. at 17-24.

⁸⁵ Id. at 24.



The records of this case were elevated to this Court on February 14, 2008,⁸⁶ pursuant to the Court of Appeals' October 18, 2007 Resolution,⁸⁷ which gave due course to Opiniano's Notice of Appeal.⁸⁸

At issue is the sufficiency of evidence to convict the appellant of robbery with homicide.

The Regional Trial Court considered the following circumstances sufficient to prove the culpability of the appellant for the offense:

1. That Jerry dela Cruz was caught albeit by chance by Caloocan City policemen while carrying a heavy bag which when opened yielded reams of Marlboro cigarettes and cash in coins and bills, among others;

2. The fact that dela Cruz' leg had fresh bloodstains and a 9-inch kris found in his person. His immediate story to the police led to the discovery of the dead bodies of the Santos couple in their residence;

3. That articles such as the cigarettes and bills in different denominations were among those taken from the victims' house; the bloodstains found on some bills corresponded to the blood types of Eladio and Leonor Santos;

4. That the pair of earrings which fell from the underwear of Diony Opiniano when under investigation at the police station belonged to the old woman and among those missing from her room; and

5. That the two paper wrappers found in Lumayag's pants bore the initial HE for Honorata Estrella, the daughter of the Santos who herself used to wrap the coins in the store and would add her initials prior to bringing them to the bank for deposit.⁸⁹

Appellant Opiniano contends, however, that the totality of the circumstantial evidence is "insufficient to support [his] conviction beyond reasonable doubt."⁹⁰ He further argues that the extra-judicial confession of Dela Cruz, implicating him in the crime, is inadmissible in evidence, as it was obtained without the assistance of counsel.⁹¹ Lastly, Opiniano points to inconsistencies in the testimonies of Dela Cruz and of the police officers, which allegedly make their story incredible.⁹²

We sustain the conviction of appellant Opiniano.

⁸⁶ Id. at 1, Court of Appeals Judicial Records Division's Letter to Supreme Court Judicial Records Office.

⁸⁷ CA *rollo*, p. 250.

⁸⁸ Id. at 245.

⁸⁹ Id. at 67-68.

⁹⁰ Id. at 131, Brief for the Accused-Appellants Romaldo Lumayag and Diony Opiniano.

⁹¹ Id. at 131-133.

⁹² Id. at 135-136.

I

Dela Cruz's extrajudicial confession without counsel at the police station without a valid waiver of the right to counsel — that is, in writing and *in the presence of counsel* — is inadmissible in evidence.⁹³ It is undisputed that Dela Cruz was neither assisted by a lawyer nor was his confession reduced into writing.⁹⁴ Further, when the police officers informed Dela Cruz of his right to a lawyer, the latter did not say anything.⁹⁵ Even so, such silence did not constitute a valid waiver of his right to remain silent and to have a competent and independent counsel. Article III, Section 12 of the Constitution states that “[t]hese rights cannot be waived except in writing and in the presence of counsel.”

Dela Cruz was merely told of his Constitutional rights, but he was never asked whether he understood what he was told or whether he wanted to exercise or avail himself of such rights.

Q You stated that after a thorough interrogation, he confessed to killing and robbing two couples. When he made that confession, was he assisted by a lawyer?

A No.

Q Was his confession in writing?

A No, sir, but he verbally admitted.

Q Did you inform the accused of his right to a lawyer of his own choice?

A Yes, sir.

Q And what did he say?

A Nothing, sir.

Q He did not tell you that he wanted a lawyer?

⁹³ *People v. Bariquit*, 395 Phil. 823, 847 (2000) [Per Curiam, En Banc]; *People v. Bonola*, G.R. No. 116394, June 19, 1997, 274 SCRA 238, 254 [Per J. Puno, En Banc].
CONST., art. III, sec. 12(1) and (3) provide:

Sec. 12. (1) Any person under investigation for the commission of an offense shall have the right to be informed of his right to remain silent and to have competent and independent counsel preferably of his own choice. If the person cannot afford the services of counsel, he must be provided with one. These rights cannot be waived except in writing and in the presence of counsel.

.....

(3) Any confession or admission obtained in violation of this or Section 17 hereof shall be inadmissible in evidence against him.

⁹⁴ TSN, July 21, 1998, p. 10, Testimony of PO2 Rodolfo Paule.

⁹⁵ *Id.* at 11.

A No, sir, because our normal procedure sir is, every time we interrogate the person, we always inform him of his constitutional rights.⁹⁶

This kind of perfunctory giving of the so-called Miranda rights is what this Court has previously frowned upon as ineffective and inadequate compliance with the mandates of the Constitution.⁹⁷ Any confession obtained under these circumstances is flawed and cannot be used as evidence not only against the declarant but also against his co-accused.⁹⁸

In *People v. Jara*,⁹⁹ this Court held that where a confession was illegally obtained from two (2) of the accused, and consequently were not admissible against them, with much more reason should the same be inadmissible against a third accused who had no participation in its execution.

Hence, Dela Cruz's extrajudicial confession is likewise inadmissible against appellant Opiniano.

II

Nonetheless, even without Dela Cruz's extra-judicial confession, Opiniano's conviction still stands. The eyewitness account of Dela Cruz, corroborated by the testimony and findings of Dr. Arizala and Forensic Biologist Buan, suffices to convict accused-appellant Opiniano of the crime charged.

The Regional Trial Court aptly gave credence to Dela Cruz's "graphic account of what transpired . . . that fateful night of November 29, 1997."¹⁰⁰ The Regional Trial Court determined Lumayag as the lead man, "who hatched the plan to rob the couple,"¹⁰¹ along with appellant as his co-conspirator.¹⁰² As a rule, findings of the trial court on the credibility of a witness will generally not be disturbed on appeal as it was the trial court which had the opportunity to observe the demeanor of the witness during

⁹⁶ Id. at 10–11.

⁹⁷ *People v. Obrero*, 387 Phil. 937, 953 (2000) [Per J. Mendoza, Second Division], citing *People v. Santos*, 347 Phil. 723, 733 (1997) [Per J. Panganiban, Third Division], *People v. Binamira*, 343 Phil. 1, 21 (1997) [Per J. Panganiban, Third Division], and *People v. Ramirez*, 292 Phil. 413, 427–431 (1993) [Per J. Davide, Jr., Third Division].

⁹⁸ *People v. Artellero*, 395 Phil. 876, 885–888 (2000) [Per J. Quisumbing, Second Division].

⁹⁹ 228 Phil. 490, 508 (1986) [Per J. Gutierrez, Jr., En Banc].

¹⁰⁰ CA rollo, p. 69.

¹⁰¹ Id.

¹⁰² Id.

l

trial.¹⁰³ Here, there is no showing that the Regional Trial Court overlooked or arbitrarily disregarded facts and circumstances of significance to the case.

Dela Cruz's straightforward narration showed how Lumayag and appellant Opiniano acted in concert to commit the robbery with homicide:

ATTY. PEREZ:

....

Q Will you demonstrate to me what you saw or what did Romaldo Lumayag do to your lola?

A (Witness demonstrating; Romaldo Lumayag held the neck of the lola with his right arm.)

Q When you saw this being done by Romaldo Lumayag, what did you do, Mr. Witness?

A When I asked him "Bakit ganon?" He answered: "Wala kang pakialam. Lakad namin ito."

Q Do you remember what happened thereafter?

A Yes, sir.

Q What happened?

A While lola was being held and she was shouting, lolo came out from the room.

Q And what happened after your lolo came out from the room?

A When my lolo came out of the room, he went inside the store andt [sic] took a knife.

....

Q Was he able to get a knife?

A Yes, sir.

Q And what did he do after he got the knife?

A When my lolo came out of the store, my cousin threw my lola towards Opiniano and Romaldo Lumayag grabbed the knife from lolo.

....

¹⁰³ *People v. Gamo*, 351 Phil. 944, 951-952 (1998) [Per J. Romero, Third Division]; *People v. Sotto*, 341 Phil. 184, 194 (1997) [Per J. Regalado, Second Division]; *People v. Arcamo, et al.*, 193 Phil. 124, 129-130 (1981) [Per Curiam, En Banc].

Q . . . [B]efore Romaldo dragged your lola to Opiniano, where was Opiniano then?

A He was outside the store, si[r].

Q Why? What was he doing there?

A He closed the store.

Q That is after lola shouted for help?

A Yes, sir.

Q And when your cousin Romaldo Lumayag was able to grab the knife from your lolo, what did Romaldo Lumayag do?

A He stabbed my lolo.

Q You saw this Romaldo Lumayag stabbed your lolo?

A Yes, sir.

Q And what did you do?

A I just stood there because I was afraid.

Q You did not help your lolo?

A I tried to pacify but I could not do so.

Q Why?

A Romaldo did not want me to pacify him. He was threatening me.

Q Do you remember how many times did Romaldo Lumayag stab your lolo?

A Several times, sir.

....

Q Is that in one moment, Mr. Witness?

A Yes, sir.

Q And what happened thereafter, Mr. Witness? What happened to your lolo?

A He fell by the sidecar.

Q By the way, Mr. Witness, you earlier testified that at that time, Opiniano was holding also your lolo, is that correct?

A Yes, sir.

Q Do you remember what happened thereafter?

A When I turned around, I saw my lola already dead.

Q Why?

A Opiniano killed my lola.

Q And do you remember what he used in killing your lola?

A Knife, sir.

Q Did you see that knife?

A Yes, sir.

....

Q You made mention, Mr. Witness, that your lolo was stabbed by Romaldo Lumayag. Did you see what he used in stabbing your lolo?

A Yes, sir.

....

Q Kindly examine this knife, Mr. Witness, and tell us if that was the knife that was used?

A This is the same knife used by Romaldo Lumayag.

Q And that was the knife which was taken by your lolo from the store?

A Yes, sir, which he grabbed.

....

Q You said, Mr. Witness, that your lola was being held by Opiniano. Is that correct?

A Yes, sir.

Q Will you kindly tell us again, Mr. Witness, what happened to her.

....

A She was stabbed by Opiniano.

Q And did you see the knife used by Opiniano in stabbing your lola?

A Yes, sir.



....

Q What happened after that?

A My cousin went upstairs.

....

Q Then, after that what happened?

A When he went downstairs, he was carrying money.

....

Q Did you know how much was that money Romaldo Lumayag was holding then?

....

A P25,000.00, sir.

Q How did you know that the money he was holding was P25,000.00?

A He counted it on the floor.

Q Thereafter, what did he do with the money?

A He put them in his pocket.

Q Do you remember what did he do after that?

....

A While carrying my bag, he went inside the store, he took the money from the drawer and removed my clothes and threw them in the store and then, he put the money inside the bag.

....

Q After putting these denominations in your bag, Mr. Witness, do you remember what did Romaldo Lumayag do afterwards?

A He frisked my lola and got the money from her pocket.

Q Do you remember where did Romaldo Lumayag put the money which he got from the pockets of your lola?

A He took the wallet of my lolo and put the money there.

....

Q Mr. Witness, do you remember what did Romaldo Lumayag do with the wallet after putting the money of your lola inside?

A He put it inside the pocket of the bag.

....

Q After Romaldo Lumayag put the wallet at the side pocket of this bag, Mr. Witness, do you remember what happened next?

A He told me to go with them.¹⁰⁴

“The testimony of a single witness, if credible and positive, is sufficient to produce a conviction.”¹⁰⁵ Dela Cruz was categorical and coherent in stating appellant Opiniano’s participation in the robbing and killing of the Spouses Santos. His testimony remained unshaken even on a lengthy and intense cross-examination from appellant Opiniano’s counsel and the prosecutor. His answers were candid and spontaneous, which, according to the Regional Trial Court, “could not have been glamorized or embellished by someone ignorant and unknowing as Jerry [D]ela Cruz.”¹⁰⁶ He positively identified Lumayag and Opiniano as the assailants who stabbed the victim spouses with a knife. Dr. Arizala testified that Eladio and Leonor died as a result of several stab wounds, inflicted by *sharp-edged*¹⁰⁷ and *single-bladed*¹⁰⁸ instruments, on different areas of their bodies. Moreover, the contents of the bag seized from Dela Cruz – Marlboro cigarettes and coins in wrappers – were the same things Estrella claimed to have been taken from the store of her parents.¹⁰⁹ The bloodstains on the cash recovered from Dela Cruz correspond to the blood types of the victims.¹¹⁰

When several accused are tried together, the confession made by one (1) of them during the trial implicating the others is evidence against the latter.¹¹¹

*In People v. De la Cruz:*¹¹²

An accused is always a competent witness for or against his co-accused, and the fact that he had been discharged from the information does not affect the quality of his testimony, for the admissibility, the relevancy, as well as the weight that should be accorded his declarations are to be determined by the Rules on Evidence. And in this connection, it

¹⁰⁴ TSN, June 15, 1999, pp. 21–33, Testimony of Jerry Dela Cruz.

¹⁰⁵ *People v. Correa*, 349 Phil. 615, 627 (1998) [Per J. Martinez, En Banc]. See also *People v. Macaliag*, 392 Phil. 284, 296 (2000) [Per J. Ynares-Santiago, First Division].

¹⁰⁶ CA *rollo*, p. 70, Regional Trial Court Decision.

¹⁰⁷ TSN, February 25, 1998, p. 44, Testimony of Dr. Floresto Arizala, Jr.

¹⁰⁸ Id. at 60.

¹⁰⁹ TSN, March 4, 1998, pp. 3–4, Testimony of Honorata S. Estrella.

¹¹⁰ TSN, February 25, 1998, pp. 11–24, Testimony of Pet Byron T. Buan.

¹¹¹ *People v. Guiapar, et al.*, 214 Phil. 475, 485 (1984) [Per J. Makasiar, En Banc], citing *People v. Cañete, et al.*, 150 Phil. 17 (1972) [Per Curiam, En Banc], *People v. Orzame, et al.*, 123 Phil. 931, 936 (1966) [Per Curiam, En Banc], *United States v. Manabat and Simeon*, 42 Phil. 569, 573–574 (1921) [Per J. Ostrand, En Banc], and *United States v. Remegio*, 37 Phil. 599, 610–611 (1918) [Per J. Malcolm, En Banc].

¹¹² 215 Phil. 144 (1984) [Per J. Escolin, Second Division].

has been held that the uncorroborated testimony of an accused, when satisfactory and convincing, may be the basis for a judgment of conviction of his co-accused.¹¹³

Appellant Opiniano points to inconsistencies in Dela Cruz's testimony *vis à vis* the testimonies of the police officers. For instance, Dela Cruz testified that the police recovered a knife, a pair of earrings, and a ring from appellant Opiniano. However, PO2 Paule testified that no jewelry or weapon was taken from appellant Opiniano.¹¹⁴ Also, Dela Cruz's testimony that appellant Opiniano was "slumped in a bangketa"¹¹⁵ when he was arrested in Letre, Malabon was allegedly contradicted by PO2 Paule's testimony that appellant was "lying on a bench"¹¹⁶ when they found him.¹¹⁷

These inconsistencies do not minimize the value of Dela Cruz's testimony. These minor contradictions pertained to matters surrounding the arrest of appellant Opiniano and do not affect his credibility.¹¹⁸ They do not disturb the fact that Dela Cruz saw appellant Opiniano and Lumayag commit the gruesome crime, and the consistency of his testimony on these points. The Regional Trial Court's conclusions were founded principally on the direct, positive, and categorical assertions made by Dela Cruz as regards *material* events in the crime.

Dela Cruz's credibility is enhanced by the absence of any improper motive.¹¹⁹ There was no evidence adduced to show that he harbored any ill-feelings towards appellant Opiniano. In fact, they were town mates from Gandara, Samar.¹²⁰ Even appellant Opiniano admits that he could not think of a single reason why Dela Cruz implicated him in the crime.¹²¹

In contrast, appellant Opiniano could only offer a lame denial and alibi, which were replete with inconsistencies. There is no corroborative evidence that appellant Opiniano was in another place at the time the crime was committed; neither was it clearly shown that it was physically impossible for him to be present at the scene of the crime.¹²²

¹¹³ Id. at 148, citing *United States v. Wayne Shoup*, 35 Phil. 56, 60 (1916) [Per J. Johnson, En Banc], and *United States v. Remigio*, 37 Phil. 599, 610-611 (1918) [Per J. Malcolm, En Banc].

¹¹⁴ CA rollo, p. 135, Brief for the Accused-Appellants Romaldo Lumayag and Diony Opiniano.

¹¹⁵ Id. at 136.

¹¹⁶ Id.

¹¹⁷ Id. at 135-136.

¹¹⁸ See *People v. Jugueta*, G.R. No. 202124, April 5, 2016 <<http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/april2016/202124.pdf>> 9 [Per J. Peralta, En Banc], citing *People v. Cabtalan*, 682 Phil. 164, 168 (2012) [Per J. Del Castillo, First Division].

¹¹⁹ *People v. Alicando*, 321 Phil. 656, 720 (1995) [Per J. Puno, En Banc].

¹²⁰ TSN, November 17, 1998, pp. 2-3, Testimony of Romaldo Lumayag.

¹²¹ TSN, December 1, 1998, p. 15, Testimony of Diony Opiniano, and TSN, January 12, 1999, pp. 3-11, Testimony of Diony Opiniano.

¹²² See *People v. Peralta*, G.R. No. 208524, June 1, 2016 <<http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/june2016/208524.pdf>> 9

All told, the prosecution proved appellant Opiniano's guilt beyond reasonable doubt of the crime of robbery with homicide. We affirm the findings of fact and conclusions of law of the Court of Appeals.

As to civil liability, we reduce the actual damages to ₱121,550.00 because these were the only expenses proven with receipts.¹²³ Hence, appellant Opiniano's and Lumayag's share in the actual damages would be ₱101,550.00. Further, in line with current jurisprudence,¹²⁴ this Court increases appellant Opiniano's and Lumayag's share in the award of civil indemnity and moral damages from ₱80,000.00 to ₱130,000.00 each, for the death of the two (2) victims. Interest at the rate of six percent (6%) per annum shall be imposed on all damages awarded from the date of the finality of this judgment until fully paid.¹²⁵

WHEREFORE, the July 31, 2007 Decision of the Court of Appeals in CA-G.R. CR-H.C. No. 01265, is **AFFIRMED with MODIFICATION** as to the amounts awarded. Accused-appellant Diony Opiniano y Verano is found **GUILTY** beyond reasonable doubt of the special complex crime of robbery with homicide and sentenced to suffer the penalty of *reclusion perpetua*.

Accused-appellants Diony Opiniano and Romaldo Lumayag are jointly and severally ordered to pay the heirs of the victims, the following amounts:

1. ₱130,000.00 as their share in the civil indemnity for the death of the two (2) victims;
2. ₱130,000.00 as their share in the moral damages for the death of the two (2) victims;
3. ₱101,550.00 as their share in the actual damages for the expenses incurred as a result of their death;

[Per J. Del Castillo, Second Division], citing *People v. Madeo*, 617 Phil. 638, 660 (2009) [Per J. Del Castillo, Second Division], and *People v. Lozada*, 454 Phil. 241, 253 (2003) [Per Curiam, En Banc].

¹²³ RTC Records, pp. 272–273.

¹²⁴ *People v. Jugueta*, G.R. No. 202124, April 5, 2016 <<http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/april2016/202124.pdf>> 14 [Per J. Peralta, En Banc].

¹²⁵ *People v. Jumawan*, 733 Phil. 102, 159 (2014) [Per J. Reyes, First Division]; *People v. Vidaña*, 720 Phil. 531, 545 (2013) [Per J. Leonardo-De Castro, First Division]; *People v. Cruz*, 714 Phil. 390, 400–401 (2013) [Per J. Reyes, First Division], citing *People v. Cabungan*, 702 Phil. 177, 190 (2013) [Per J. Del Castillo, Second Division]; *People v. Gani*, 710 Phil. 466, 476 (2013) [Per J. Peralta, Third Division], citing *People v. Amistoso*, 701 Phil. 345, 364 (2013) [Per J. Leonardo-De Castro, First Division]; *People v. Arpon*, 678 Phil. 752, 792 (2011) [Per J. Leonardo-De Castro, First Division].

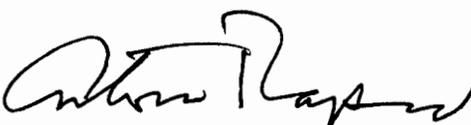
4. ₱81,500.00 representing their share in the reimbursement of the value of the pieces of jewelry taken during the robbery.

Furthermore, all monetary awards for damages shall earn interest at the legal rate of six percent (6%) per annum from the date of the finality of this judgment until fully paid.

SO ORDERED.


MARVIC M.V.F. LEONEN
Associate Justice

WE CONCUR:


ANTONIO T. CARPIO
Associate Justice
Chairperson


DIOSDADO M. PERALTA
Associate Justice


JOSE CATRAL MENDOZA
Associate Justice


SAMUEL R. MARTIRES
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.


ANTONIO T. CARPIO
Associate Justice
Chairperson, Second Division

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.



MARIA LOURDES P. A. SERENO
Chief Justice