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[G.R. No. 141121. July 17, 2003]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **REYNALDO LOZADA** *y* **SALOPESA,** ***alias*** **"ROY," GERALDINE BELLEZA** *y* **MAYAGMA,** ***alias*** **"MAYMAY," RONNIE SANCHEZ, at large, REY ANDALES, at large,** *appellants.*

SYNOPSIS

Appellants were found guilty in conspiracy for the crime of robbery with homicide and sentenced to the extreme penalty of death. Hence, this appeal.

The Court ruled that there were sufficient circumstantial evidence to convict appellants. Witness Diaz testified on the details of appellants' plan to rob and kill the victim. Later, the body of the victim was discovered at the place where it was expected to be. Some of the victim's belongings were found in the possession of appellant Lozada while her other effects were retrieved by the police in the place disclosed by appellant Belleza. The owner of the taxicab used by appellants in perpetrating the offense testified that appellant Belleza was the assigned driver of the vehicle at the time. Hence, the presence of the aggravating circumstances of evident premeditation and use of a motor vehicle in the commission of robbery with homicide, justifying the imposition of the death penalty upon appellants.

SYLLABUS

1. **REMEDIAL LAW; CRIMINAL PROCEDURE; ARREST WITHOUT WARRANT; PERSONAL KNOWLEDGE THAT PERSON TO BE ARRESTED HAS JUST COMMITTED A CRIME SHOULD BE BASED ON PROBABLE CAUSE. –** The applicable rule at the time of the arrest of appellants is Section 5(b), Rule 113, of the 1985 Rules of Criminal Procedure which provides that "a peace officer or a private person may, without a warrant, arrest a person: x x x (b) when an offense has in fact just been committed, and he has personal knowledge of facts indicating that the person to be arrested

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has committed it." "Personal knowledge," the Court has explained, should be based on "probable cause" which means an actual belief or reasonable grounds of suspicion. The grounds of suspicion are reasonable when the suspicion on the probable guilt of the person to be arrested is based on facts or circumstances sufficiently strong in themselves to create a probable cause of guilt of the person to be arrested.

2. **ID.; ID.; ID.; PROPER WHERE ARRESTING OFFICER HAS PERSONAL KNOWLEDGE OF FACTS GATHERED THROUGH INVESTIGATION.** – In *People vs. Tonog, Jr.*, the Court upheld a warrantless arrest under Section 5(b), Rule 133, of the 1985 Rules of Criminal Procedure because the arresting officer, "in effecting the arrest of (the) accused x x x, had knowledge of facts gathered by him personally in the course of his investigation indicating that (the accused) was one of the perpetrators." In the instant case, the police officers, on the basis of the facts gathered in the course of their investigation, including the disclosure made by Reynaldo Diaz on how the plan to commit the offense was hatched, also had sufficient and reasonable grounds of suspicion that appellants were probably guilty of the crime charged.

3. **ID.; ID.; ID.; OBJECTION AGAINST ARREST MUST BE MADE AT OR BEFORE ARRAIGNMENT OR IT IS DEEMED WAIVED.** – Even on the assumption that the police erred in not securing warrants for the capture of appellants, the latter could no longer impugn the validity of their arrest. Any objection against an arrest or the procedure in the acquisition by the court of jurisdiction over the person of an accused should be made at or before the arraignment; otherwise the objection is deemed waived. Appellants entered their "plea of not guilty" to the crime of robbery with homicide and thereafter participated in the trial without questioning the legality of their arrest.

4. **ID.; ID.; SEARCH AND SEIZURE; SEARCH INCIDENT TO LAWFUL ARREST UPHELD BY WAIVER OF RIGHT AGAINST WARRANTLESS SEARCH IN CASE AT BAR.** – The search conducted on appellant Lozada, being an incident to the lawful arrest, should also be upheld. Belleza, on the other hand, waived his right against a warrantless search when he himself voluntarily disclosed where he hid the keys and the bag of Rosita Sy and where, true enough, the items were recovered.

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5. ID.; EVIDENCE; EXTRA-JUDICIAL CONFESSIONS; INADMISSIBLE WHEN NOT IN WRITING AND SIGNED BY PERSON ARRESTED. – The extra-judicial confessions made by appellants Lozada and Belleza, however, are inadmissible in evidence. The supposed confessions have merely been recounted on the witness stand by the investigating officers. Republic Act No. 7438 requires an extra-judicial confession made by the person arrested, detained or under custodial investigation to be in writing and signed by such person; otherwise, it shall be inadmissible in evidence.

6. ID.; ID.; CIRCUMSTANTIAL EVIDENCE; REQUISITES. – While there may be no eyewitnesses to a crime, conviction could still be reached on the basis of circumstantial evidence, provided a) there is more than one circumstance; b) the facts from which the inferences are derived are proven; and c) the combination of all the circumstances is such as to produce a conviction beyond reasonable doubt.

7. ID.; ID.; PRESUMPTIONS; RECOVERY OF LOOT FROM THE ARRESTED CULPRIT GIVES RISE TO PRESUMPTION OF HIS GUILT. – The recovery of the loot from appellants at the time of their arrest moreover gives rise to the legal presumption of guilt. The absence of an explanation on how appellants have come into the possession of the personal effects of the victim gives rise to reasonable presumption that they, too, could have been the authors of the crime.

8. ID.; ID.; DENIAL; CANNOT PREVAIL OVER CREDIBLE EVIDENCE AND ABSENT PHYSICAL IMPOSSIBILITY OF PRESENCE AT THE PLACE AND TIME OF THE COMMISSION OF OFFENSE. – Mere denial and *alibi,* not only are weak defenses, but also cannot prevail over credible evidence particularly when, on their face, they do not demonstrate the physical impossibility of an accused's presence at the place and time of the commission of the offense.

9. CRIMINAL LAW; ROBBERY WITH HOMICIDE; ELEMENTS, PRESENT. – The taking with *animo lucrandi* of personal property belonging to another by means of violence against or intimidation of persons or using force upon things constitutes robbery, and the complex crime of robbery with homicide arises when by reason or on the occasion of the robbery, someone is killed. All these elements have satisfactorily been shown by the prosecution.

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10. ID.; CONSPIRACY; THE ACT OF ONE MAY BE IMPUTED TO ALL CONSPIRATORS. – Conspiracy, aptly alleged in the amended information, has attended the commission of the crime. Conspiracy exists when two or more persons come to an agreement concerning the commission of the felony and decide to commit it. The prosecution has narrated in detail how the appellants and their co-accused have agreed to a common design to rob and kill the victim. The subsequent discovery of the lifeless body of the victim and the recovery by the police of the victim's belongings in the possession of the appellants would later confirm the execution of plan to rob and kill the victim. Where conspiracy is shown, the precise modality or extent of participation of each accused becomes secondary and the act of one may be imputed to all the conspirators. In the special complex crime of robbery with homicide, it is not necessary to identify who among the conspirators have inflicted the stab wound on the victim.

11. ID.; AGGRAVATING CIRCUMSTANCES; EVIDENT PREMEDITATION; ELEMENTS.— The aggravating circumstances of evident premeditation and use of motor vehicle have both been alleged and proved. Where conspiracy is *directly* established, with proof of the attendant deliberations and selection of method, time and means of executing the crime, the existence of evident premeditation can be considered for then its own elements, *i.e.,* 1) the time when the offenders determined to commit the crime; 2) an act manifestly indicating that the offenders clung to their determination; and 3) a lapse of time between the determination and the execution sufficient to allow the offenders to reflect upon the consequences of the act, themselves would have thereby become evident.

12. ID.; ID.; USE OF A MOTOR VEHICLE; PRESENT IN CASE AT BAR. – The use of a motor vehicle is aggravating when it is used either to commit the crime or to facilitate escape. Appellants, indeed, have made use of a taxicab to tail the victim in her car, bump her vehicle, drive past her and eventually rob and kill her.

13. ID.; ROBBERY WITH HOMICIDE; PROPER PENALTY WHEN TWO AGGRAVATING CIRCUMSTANCES PRESENT. – Under Article 294(1) of the Revised Penal Code, as amended by Republic Act No. 7659, any person guilty of robbery with homicide shall suffer the penalty of *reclusion perpetua* to death. Since the crime has been committed with

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the aggravating circumstances of evident premeditation and use of motor vehicle, the death penalty has correctly been imposed upon appellants.

14. ID.; ID.; CIVIL DAMAGES; PROPER CIVIL INDEMNITY WHERE PENALTY IS DEATH. – The ₱50,000.00 civil indemnity awarded by the trial court to the heirs of the victim should be increased to ₱75,000.00 considering that the crime was committed under circumstances that justify the imposition of the death penalty.

15. ID.; ID.; ID.; PROPER AWARDS OF MORAL, ACTUAL AND EXEMPLARY DAMAGES. – The award of ₱200,000.00 moral damages shall be lowered to ₱50,000.00, in keeping with prevailing jurisprudence. Apart from the actual damages in the amount of ₱87,303.70, duly supported by receipts, the heirs of the victim should also be entitled to ₱25,000.00 exemplary damages in view of the presence of aggravating circumstances in the commission of the crime.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellant R. Lozada.
Atty. Goldwyn V. Nifras for accused-appellant G. Belleza.

D E C I S I O N

***PER CURIAM*:**

On the early morning of 14 October 1998, the lifeless body of Rosita Sy was found inside her car along a remote *hacienda* road in Barangay Estefania, Bacolod City. The *post mortem* examination showed that Rosita Sy had died at approximately eleven o'clock on the evening of 13 December 1998 caused by "cardio-respiratory arrest, shock, hemorrhage, severe, internal lacerated liver, right lobe and ruptured heart" due to a single stab wound inflicted on the right side of her body just below the ribs. Her bag, containing at least ₱4,000.00 cash and her ring worth ₱2,000.00, was missing. The police apprehended Reynaldo Lozada and Geraldine Belleza who, together with Ronnie

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Sanchez and Rey Andales (at large), were charged with the special complex crime of robbery with homicide before the Regional Trial Court of Negros Occidental, Branch 50, in an Amended Information that read:

"The undersigned Assistant City Prosecutor hereby accuses REYNALDO LOZADA y SALOPESA @ 'ROY,' GERALDINE BELLEZA *y* MAYAGMA @ 'MAYMAY,' *RONNIE SANCHEZ* and *REY ANDALES* of the crime of ROBBERY WITH HOMICIDE Under Art. 294 (1) of the RTC, as amended, committed as follows:

"That on or about the 13th day of October, 1998, in the City of Bacolod, Philippines, and within the jurisdiction of this Honorable Court, the herein accused, conspiring, confederating together and mutually acting in concert, with intent of gain and by means of force and intimidation against the person of Rosita Sy *y* Son, did, then and there willfully, unlawfully and feloniously take, rob and carry away with them one (1) tissue holder (black wallet) containing the sum of ₱4,000.00, Philippine Currency, two (2) lipsticks and one (1) ring worth ₱1,500.00 belonging to the said Rosita Sy, to her damage and prejudice in the aforementioned amount; that by reason or on the occasion of the said robbery, *the herein accused in pursuance of their conspiracy* and for the purpose of enabling them to take, rob and carry away the said amount and other personal belongings of the said offended party, the herein accused with intent to kill, with treachery, evident premeditation, *abuse of superior strength and making use of nocturnity*, being then armed with knives and by use of a motor vehicle, *craft was employed by the accused by deliberately pretending to bump the car of Rosita Sy in the commission of the crime and to ensure their escape*, did, then and there willfully, unlawfully and feloniously assault, attack, stab and use personal violence upon the person of Rosita Sy *y* Son, thereby inflicting upon her the following:

"*Wound, stab, 2 cm. long, 12 inches deep at the right lateral aspect of the hypochondrium along anterior axillary line directed upward diagonally medically lacerating the right lobe of the liver and rupturing the heart.*

"Cause of death:

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> Cardio-respiratory arrest, shock hemorrhage, severe, internal lacerated liver, right lobe and ruptured heart due to a stab wound.

which would directly cause the death of Rosita Sy *y* Son, to the damage and prejudice of her heirs.

"Act contrary to law."[1]

Lozada and Belleza, on 02 December 1998, entered a plea of "not guilty" to the accusation.

The evidence for the prosecution hinges much on the testimony of Reynaldo Diaz who recounted the events of 11 and 13 October 1998.

On 11 October 1998, at about eight-thirty in the evening, Reynaldo Diaz, a *trisikad* driver, went to a coffee shop in front of Rizal Theater, along Luzuriaga Street, Bacolod Central Market, Bacolod City. He saw his old acquaintance Ronnie Sanchez. He and Sanchez, a taxi driver, talked for a while and in the course of their conversation, Sanchez disclosed to Diaz his plan to rob Rosita Sy, the owner of Wilrose Drugstore, later that evening. Out of curiosity, Diaz asked Sanchez how he would accomplish the scheme and who would help him carry it out. Sanchez replied that they should first wait for some friends who would be coming over to finalize the "whole thing." Sanchez then asked Diaz if he would be interested to join the group. Diaz responded in the affirmative.

After a little while, Geraldine Belleza arrived, driving a white Kia Pride taxicab. Soon, Rey Andales also arrived. The two were introduced to Diaz. Later, Lozada came in at the coffee shop. Diaz immediately recognized him because he was also a *trisikad* driver. Sanchez approached Lozada and invited him to join in. Lozada agreed. Sanchez then discussed the plan to the group. He told them that Rosita Sy would normally leave Wilrose Drugstore around ten-thirty to eleven o'clock in the evening carrying with her a substantial sum of money. The group would wait for her on board the white Kia Pride taxi and then tail her.

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[1] *Rollo*, pp. 16-17.

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The moment she would reach Lopue's East, the group would bump her vehicle, drive past her and stop a few distance away from the car. Once Rosita Sy would have alighted from her car to check the damage, Sanchez was to kill her to ensure the group's anonymity. Appellants Lozada and Belleza agreed. The latter volunteered to drive the taxicab that would be used to perpetrate the crime.

When he realized that Rosita Sy would not only be robbed but also killed as well, Diaz changed his mind about joining the group. Without expressing this intention to the group he excused himself by saying that he would have to get a weapon. Purposely, he delayed his return. After an hour, he saw the group still in the coffee shop. He was informed that they failed to catch up with Rosita Sy because they had to wait for Diaz. The malefactors decided to instead pursue the plan on 13 October 1998 since it was again Belleza's turn to drive the taxicab to be used. On the night of 13 October 1998, Diaz deliberately stayed away from the designated meeting place. The following day, he heard over the radio that the lifeless body of the owner of Wilrose Drugstore was found in a remote *hacienda* road in Barangay Estefania. Immediately, he informed Bert Grajo, the owner of the house where he was staying about the plan hatched by Lozada, Belleza, Sanchez and Andales.

Bert Grajo testified that, upon hearing the Diaz story, he went to see team leader SPO4 Esperidion Estana of Police Station IV. At that time, however, SPO4 Estana was already at the crime scene investigating the incident. Grajo then proceeded to Wilrose Drugstore to speak with the family of Rosita Sy. Not having been able to talk to them, he just left word with one of the employees. The latter promptly called Police Station IV and told them about the "message" relayed by Grajo.

SPO4 Estana narrated that he asked Grajo to bring Diaz to the police station. At the station, Diaz informed SPO4 Estana of the names and addresses of the alleged conspirators. Forthwith, SPO4 Estana organized a team that would effect the arrest of the assailants. The team, together with Diaz and Grajo, proceeded to the residence of Lozada who, upon seeing the police, tried

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to flee but SPO1 Jose Pahayupan was quick to collar him. SPO1 Pahayupan recovered from Lozada a black purse containing two (2) lipsticks, one (1) wallet with money, and a pawnshop receipt for the pledge of a ring later recognized to belong to the victim. The purse and wallet were identified to be those of the victim by the latter's daughter. SPO2 Johnny Herboso testified that at the police station, Lozada confessed to him his participation in the robbery. Lozada gave the names and addresses of Belleza, Sanchez and Andales.

On 15 October 1998, appellant Belleza was apprehended by members of the City Director Squad. He was turned over to Police Station IV. Belleza admitted before SPO4 Estana that he was the one who drove the white Kia Pride taxicab when they robbed and killed Rosita Sy. He named appellant Lozada, Andales, and Sanchez as his cohorts in committing the crime. He led the police to the place where he hid the keys and bag of Rosita Sy.

Lucia Caballero testified (at rebuttal) that she was the owner of the Kia Pride Taxi driven by Belleza. She confirmed that it was Belleza who was the assigned driver of the taxicab on 13 October 1998. The following day, Belleza returned the taxicab, reporting to its owner that the left front light of the vehicle had been hit and damaged by an "insane person."

The defense was one of denial coupled with *alibi*.

Reynaldo Lozada claimed that at around six o'clock on the afternoon of 13 October 1998, he was at home cooking supper. He did not report for work that day because it was his rest day. He slept at about nine o'clock in the evening. When he woke up the following day, he was not feeling well so he decided not to go to work as well. At five o'clock in the afternoon, two policemen arrived at his house and, without any warrant, arrested and subsequently searched him. Nothing was found in his possession except his belt with a buckle knife. In jail, he met for the first time his co-accused Belleza. He was maltreated by the police and, out of fear, he admitted his participation in the crime.

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Geraldine Belleza, for his part, maintained that on the evening of 13 October 1998, he was on duty as a barangay *tanod*, roving with the *purok* president of Greensville Subdivision, the areas of Estefania, Greensville I and Camingawan proper. In the morning of the following day, he went to Talisay to gather sea crabs and thereafter spent the rest of the day with his wife and children. On 15 October 1998, his uncle Walter Nepomuceno, a member of the Talisay police, informed him that the authorities in Bacolod City were looking for him about the Rosita Sy rob-slay. Since he had nothing to do with the crime, he willingly submitted himself for investigation. He denied knowing his co-accused and surrendering a lady's bag and a bunch of keys to the police.

After trial, the court *a quo* found Reynaldo Lozada and Geraldine Belleza guilty beyond reasonable doubt of the crime with which they were charged and sentenced each of them to suffer the extreme penalty of death.

In this review, appellant Reynaldo Lozada would want the Court to hold that the trial court erred in not finding his warrantless arrest to be unlawful, in not declaring as unconstitutional the search conducted on his person and as being thus inadmissible in evidence the items seized from him, in allowing the use of his alleged extra-judicial confession against him, and in finding him guilty of the crime charged. Appellant Geraldine Belleza submitted the lone argument that the trial court had erred in convicting him on the mere basis of circumstantial evidence.

It remained undisputed that there was no warrant issued for the arrest of the appellants. The trial court, nonetheless, ruled that the arrests were lawful because they were based on probable cause and the police had to immediately act to prevent the likely flight of appellants. It was a valid warrantless arrest, according to the Solicitor General, under Section 5(b), Rule 113 of the Revised Rules of Criminal Procedure.[2]

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[2] "A peace officer or a private person may, without a warrant, arrest a person: xxx (b) when an offense has just been committed and he has probable cause to believe based on personal knowledge of facts or circumstances that the person to be arrested has committed it."

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The applicable rule at the time of the arrest of appellants is Section 5(b), Rule 113, of the 1985 Rules of Criminal Procedure which provides that "a peace officer or a private person may, without a warrant, arrest a person: xxx (b) when an offense has in fact just been committed, and he has personal knowledge of facts indicating that the person to be arrested has committed it." "Personal knowledge," the Court has explained, should be based on "probable cause" which means an actual belief or reasonable grounds of suspicion.[3] The grounds of suspicion are reasonable when the suspicion on the probable guilt of the person to be arrested is based on facts or circumstances sufficiently strong in themselves to create a probable cause of guilt of the person to be arrested.[4]

In *People vs. Tonog, Jr.*,[5] the Court upheld a warrantless arrest under Section 5(b), Rule 133, of the 1985 Rules of Criminal Procedure because the arresting officer, "in effecting the arrest of (the) accused xxx, had knowledge of facts gathered by him personally in the course of his investigation indicating that (the accused) was one of the perpetrators." In the instant case, the police officers, on the basis of the facts gathered in the course of their investigation, including the disclosure made by Reynaldo Diaz on how the plan to commit the offense was hatched, also had sufficient and reasonable grounds of suspicion that appellants were probably guilty of the crime charged.

But even on the assumption that the police erred in not securing warrants for the capture of appellants, the latter could no longer impugn the validity of their arrest. Any objection against an arrest or the procedure in the acquisition by the court of jurisdiction over the person of an accused should be made at or before the arraignment; otherwise the objection is deemed waived.[6]

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[3] *People vs. Doria*, 361 Phil. 595, citing *Umil vs. Ramos*, G.R. Nos. 81567, 84581-84, 83162, 85727 & 86332, 03 October 1991, 202 SCRA 251.

[4] *Id.*

[5] G.R. No. 94533, 4 February 1992, 205 SCRA 772.

[6] *People vs. Gallarde*, 382 Phil. 718.

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Appellants entered their "plea of not guilty" to the crime of robbery with homicide and thereafter participated in the trial without questioning the legality of their arrest. The search conducted on appellant Lozada, being an incident to the arrest, should also be upheld. Belleza, on the other hand, waived his right against a warrantless search when he himself voluntarily disclosed where he hid the keys and the bag of Rosita Sy and where, true enough, the items were recovered.

The extra-judicial confessions made by appellants Lozada and Belleza, however, are inadmissible in evidence. The supposed confessions have merely been recounted on the witness stand by the investigating officers. Republic Act No. 7438[7] requires an extra-judicial confession made by the person arrested, detained or under custodial investigation to be in writing and signed by such person; otherwise, it shall be inadmissible in evidence.[8]

While there may be no eyewitnesses to a crime, conviction could still be reached on the basis of circumstantial evidence, provided a) there is more than one circumstance; b) the facts from which the inferences are derived are proven; and c) the

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[7] "An Act Defining Certain Rights of Person Arrested, Detained or Under Custodial Investigation as well as the Duties of the Arresting, Detaining, and Investigating Officers and Providing Penalties for Violations thereof."

[8] Republic Act No. 7438, Section 2. Rights of Persons Arrested, Detained, or under Custodial Investigation; Duties of Public Officers.

xxx xxx xxx

c) The custodial investigation report shall be reduced to writing by the investigating officer, provided that before such report is signed or thumbmarked if the person arrested or detained does not know how to read and write, it shall be read and adequately explained to him by his counsel or by the assisting counsel provided by the investigating officer in the language or dialect known to such arrested or detained person, otherwise, such investigation report shall be null and void and of no effect whatsoever.

d) Any extra judicial 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, 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.

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combination of all the circumstances is such as to produce a conviction beyond reasonable doubt.[9]

The circumstantial evidence introduced at the trial included a) the testimony of Reynaldo Diaz detailing the plan of the group composed of appellants and two other accused (at large) to rob and kill the victim and how it was to be carried out; b) the discovery of the body of Rosita Sy, apparently the victim of foul play, at the place where it was expected to be; c) the victim's belongings — her purse, lipsticks, wallet, and a pawnshop receipt for the victim's ring — were found in the possession of appellant Lozada; d) the victim's black bag and bunch of keys were retrieved by the police in the place disclosed by appellant Belleza; e) the testimony of the owner of the taxicab that appellant Belleza was, on the day the crime occurred, indeed the assigned driver of the vehicle used by appellants in perpetrating the offense; and f) the taxicab was returned by Belleza with a damaged front headlight giving a lame excuse on how it was damaged.

The circumstances constitute an unbroken chain which leads to the reasonable conclusion that the trial court could not have erred in finding appellants to have been the responsible culprits. The recovery of the loot from appellants at the time of their arrest moreover gives rise to the legal presumption of guilt. The absence of an explanation on how appellants have come into the possession of the personal effects of the victim gives rise to reasonable presumption that they, too, could have been the authors of the crime.[10]

Mere denial and *alibi*, not only are weak defenses, but also cannot prevail over credible evidence particularly when, on their face, they do not demonstrate the physical impossibility of an accused's presence at the place and time of the commission of the offense.[11]

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[9] Section 4, Rule 133 of the Rules of Court.

[10] *People vs. Mantung*, G.R. No. 130372, 20 July 1999, 310 SCRA 819; *People vs. Prado*, G.R. No. 95260, 08 March 1996, 254 CRA 531; *People vs. Kagui Malasugui*, 63 Phil. 221.

[11] See *People vs. Aranjuez*, G.R. No. 121898, 29 January 1998, 285 SCRA 466.

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The taking with *animo lucrandi* of personal property belonging to another by means of violence against or intimidation of persons or using force upon things constitutes robbery, and the complex crime of robbery with homicide arises when by reason or on the occasion of the robbery, someone is killed.[12] All these elements have satisfactorily been shown by the prosecution.

Conspiracy, aptly alleged in the amended information, has attended the commission of the crime. Conspiracy exists when two or more persons come to an agreement concerning the commission of the felony and decide to commit it.[13] The prosecution has narrated in detail how the appellants and their co-accused have agreed to a common design to rob and kill the victim. The subsequent discovery of the lifeless body of the victim and the recovery by the police of the victim's belongings in the possession of the appellants would later confirm the execution of plan to rob and kill the victim. Where conspiracy is shown, the precise modality or extent of participation of each accused becomes secondary and the act of one may be imputed to all the conspirators.[14] In the special complex crime of robbery with homicide, it is not necessary to identify who among the conspirators have inflicted the stab wound on the victim.[15]

The aggravating circumstances of evident premeditation and use of motor vehicle have both been alleged and proved. Where conspiracy is *directly* established, with proof of the attendant deliberations and selection of method, time and means of executing the crime, the existence of evident premeditation can be considered[16] for then its own elements, *i.e.*, 1) the time when the offenders determined to commit the crime; 2) an act manifestly indicating that the offenders clung to their determination; and 3) a lapse of time between the determination and the execution

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[12] Article 294 (1), Revised Penal Code; *People vs. Mantung, supra.*

[13] Article 8 (Paragraph 2), Revised Penal Code.

[14] *People vs. Reyes*, G.R. No. 120642, 02 July 1999, 309 SCRA 622.

[15] *People vs. Conde*, G.R. No. 133647, 12 April 2000, 330 SCRA 645.

[16] *People vs. Timbang*, 74 Phil. 295; *U.S. vs. Cornejo*, 28 Phil. 457.

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sufficient to allow the offenders to reflect upon the consequences of the act,[17] themselves would have thereby become evident. The use of a motor vehicle is aggravating when it is used either to commit the crime or to facilitate escape.[18] Appellants, indeed, have made use of a taxicab to tail the victim in her car, bump her vehicle, drive past her and eventually rob and kill her.

Under Article 294(1) of the Revised Penal Code, as amended by Republic Act No. 7659, any person guilty of robbery with homicide shall suffer the penalty of *reclusion perpetua* to death. Since the crime has been committed with the aggravating circumstances of evident premeditation and use of motor vehicle, the death penalty has correctly been imposed upon appellants.

The ₱50,000.00 civil indemnity awarded by the trial court to the heirs of the victim should be increased to ₱75,000.00 considering that the crime was committed under circumstances that justify the imposition of the death penalty.[19] The award of ₱200,000.00 moral damages shall be lowered to ₱50,000.00, in keeping with prevailing jurisprudence.[20] Apart from the actual damages in the amount of ₱87,303.70, duly supported by receipts,[21] the heirs of the victim should also be entitled to ₱25,000.00 exemplary damages in view of the presence of aggravating circumstances in the commission of the crime.[22]

Three justices of the Court have continued to maintain their adherence to the separate opinions expressed in *People vs. Echegaray*[23] that Republic Act No. 7659, insofar as it prescribes

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[17] *People vs. Gatchalian*, G.R. No. 90301, 10 December 1998, 300 SCRA 1; *People vs. Manalili*, G.R. No. 121671, 14 August 1998, 294 SCRA 220.

[18] *People vs. Cuadra*, No. L-27973, 23 October 1978, 85 SCRA 576.

[19] See *People vs. Lobitania*, G.R. No. 142380, 4 September 2002; *People vs. Ballenas*, G.R. No. 124299, 12 April 2000, 330 SCRA 519.

[20] *People vs. Paraiso*, G.R. No. 127840, 29 November 1999, 319 SCRA 422; *People vs. Cayago*, G. R. No. 128827, 18 August 1999, 312 SCRA 623.

[21] Exhibits I-1 to I-17.

[22] Article 2230, New Civil Code.

[23] G.R. No. 117472, 07 February 1997, 267 SCRA 682.

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the death penalty, is unconstitutional; nevertheless, they submit to the ruling of the majority to the effect that the law is constitutional and that the death penalty can be lawfully imposed.

WHEREFORE, the decision of the Regional Trial Court finding appellants Reynaldo Lozada and Geraldine Belleza guilty beyond reasonable doubt of the special complex crime of Robbery with Homicide and sentencing them to suffer the death penalty is hereby AFFIRMED with the modification that they are ordered to pay the heirs of the victim ₱75,000.00 civil indemnity, ₱87,303.70 actual damages, ₱50,000.00 moral damages, and ₱25,000.00 exemplary damages.

In accordance with Section 25 of Republic Act No. 7659, amending Article 83 of the Revised Penal Code, upon finality of this decision, let certified true copies thereof, as well as the records of this case, be forthwith forwarded to the Office of the President for possible exercise of the pardoning power.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Puno, Vitug, Panganiban, Ynares-Santiago, Carpio, Austria-Martinez, Corona, Carpio Morales, Callejo, Sr., Azcuna, and *Tinga, JJ.*, concur.

Quisumbing and *Sandoval-Gutierrez, JJ.*, on leave.

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[G.R. Nos. 143002-03. July 17, 2003]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **CHARMIE SERVANO *y* GAOR,** *appellant.*