



Republic of the Philippines  
**Supreme Court**  
 Manila

CERTIFIED TRUE COPY  
*Wilfredo V. Laditan*  
 WILFREDO V. LADITAN  
 Division Clerk of Court  
 Third Division

AUG 17 2018

**THIRD DIVISION**

**PEOPLE OF THE PHILIPPINES,**      **G.R. No. 233334**  
 Plaintiff-Appellee,

Present:

- versus -

VELASCO, JR., *J.*, *Chairperson*,  
 BERSAMIN,  
 LEONEN,  
 MARTIRES, and  
 GESMUNDO, *JJ.*

**JOHN CARLO SALGA and RUEL**      Promulgated:  
**“TAWING” NAMALATA,**  
 Accused-Appellants.

July 23, 2018

X-----*Wilfredo V. Laditan*-----X

**DECISION**

**BERSAMIN, J.:**

The mere fact that the accused were seen together immediately after the commission of a felony does not necessarily prove the existence of a conspiracy between them. The Prosecution must show that the accused performed overt acts showing unanimity of design or concert of action; otherwise, each is liable only for the consequences of his own acts.

**The Case**

Accused John Carlo Salga (John) and Ruel “Tawing” Namalata (Ruel) hereby challenge the decision promulgated on April 7, 2017 by the Court of Appeals (CA) in CA-G.R. CR-HC No. 01321-MIN<sup>1</sup> affirming their conviction for robbery with homicide handed down by the Regional Trial Court (RTC), Branch 11, in Manolo Fortich, Bukidnon through the judgment rendered in Criminal Case No. 10-07-4149 on May 27, 2014.<sup>2</sup>

<sup>1</sup> *Rollo*, pp. 3-23; penned by Associate Justice Ronaldo B. Martin with the concurrence of Associate Justice Edgardo T. Lloren and Associate Justice Perpetua T. Atal-Paño.

<sup>2</sup> *CA rollo*, pp. 30-39; penned by Judge Jose U. Yamut, Sr.

### Antecedents

John and Ruel, along with two others identified as John Does, were charged with robbery with homicide under the following information:

That on or about the 14<sup>th</sup> day of February 2010, in the afternoon, at Barangay Damilag, Municipality of Manolo Fortich, Province of Bukidnon, Philippines, within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping one another, by means of force and violence, did then and there willfully, unlawfully and feloniously, with intent to gain and without the consent of the owner thereof enter the house of JOSEFINA ZULITA y EDRALIN and once inside entered the room of JOAN CAMILLE ZULITA y EDRALIN and rob, take, and carry away cash amounting to THIRTY-FOUR THOUSAND PESOS (₱34,000.00), Philippine Currency from the vault and one (1) Samsung Cellphone E590 Model belonging to JOSEFINA ZULITA y EDRALIN;

That on the occasion of the said robbery and for the purpose of enabling them to take, rob and carry away the money above-mentioned, accused did then and there willfully, unlawfully, and feloniously, with intent to kill, with the use of a gun, attack, assault, strike the head and shoot the caretaker of the house of CATALINA ARCEGA, thereby inflicting upon the latter mortal injuries which [caused] her death.

CONTRARY to and in violation of Article 294(1) of the Revised Penal Code.<sup>3</sup>

The CA summarized the factual antecedents as follows:

On August 16, 2010, Namalata was arrested by the police and correspondingly detained. When arraigned on September 6, 2010, Namalata, assisted by counsel de parte, entered a plea of “not guilty” to the charge. On April 18, 2011, the pre-trial conference with respect to Namalata was terminated.

On July 11, 2011, Salga surrendered to the police authorities. After Salga was placed into custody, the criminal charge against him proceeded. Hence, on July 25, 2011, Salga, assisted by counsel de officio from the Public Attorney’s Office, entered a plea of “not guilty” in Criminal Case No. 10-07-4149. The pre-trial conference with respect to Salga was concluded on August 3, 2011.

Thereafter, trial on the merits ensued. During trial, the prosecution presented in evidence the testimonies of Joan Camille Zulita, Juliano Bernas, Constancio Hinlo, Jr., Dr. Broxil Macabinlar, Patrick Fillarca, Flora Sencil and Josefina Zulita. The defense then presented the testimonies of Marcelo Abenaza, Keren Hope Vivares, Celso Baol, Allan Cahoy, Ruel Namalata, Angelito Salga, Cesar Pabillan and John Carlo Salga.

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<sup>3</sup> Id. at 30-31.

Joan Camille Zulita testified that on February 14, 2010, around 4:00 o'clock in the afternoon, she was watching television in their house at Barangay Damilag, Manolo Fortich, Bukidnon, when she noticed that three persons entered their gate. The two persons proceeded to the main door while the third one went to the garden where their helper Catalina Arcega was tending to the plants. Joan was shocked and could not move out of fear because the two persons who went towards her were armed. One of the two persons aimed a gun at her and ordered her to keep quiet. Out of fear, she maintained that she could not shout for help nor move as she didn't know what to do. Afterwards, the man who told her to keep quiet and who was later identified as appellant John Carlo Salga (Salga) asked her about the location of the vault. She alleged that when she could not open the vault, Salga told her to get the keys from her mother's room. She followed the robbers' order. While Salga was pointing his gun at her and the second accused was choking her neck, she tried to open the vault using the keys but failed to open it. Thus, she contended that Salga and his companion brought the vault to the sala where they successfully opened it and took all the money inside. At that time, when the robbers left her inside the bedroom, she hurriedly hid under the bed. While hiding under the bed, she affirmed that she heard a gunshot from outside. When she sensed that the armed men had already left, she went out of her hiding place and went to the living room, where she saw the vault already emptied of its content. The armed men took cash amounting to ₱34,000.00 from the vault and her Samsung E590 cellphone worth ₱6,000.00. She declared that she immediately looked for her mother and saw the latter tending the plants in the garden unaware of the robbery inside. She shouted that they had been robbed which prompted her mother to run to her and embrace her. She and her mother looked for their househelp Catalina Arcega, but failed to find the latter. Thus, the two of them sought the help of their family driver who was then at Camp Phillips Terminal. They also found her brother Jackel, who accompanied them to the police station to report the incident. After which, accompanied by her mother and brother Jackel, they went home. Upon arriving at their house, a search for Catalina Arcega was again conducted, and it was her brother Jackel who found the househelp, who at that time was already seriously wounded.

Josefina Zulita professed that on February 14, 2010 at around 4:00 o'clock in the afternoon, she was at the back of their house. She expressed that while she was tending to her garden, she heard a gunshot. She saw her daughter Joan Camille, who shouted that they had been robbed. She rushed to her daughter and embraced the latter. Joan Camille appeared to be in a state of shock. She and Joan Camille went to look for their househelp Catalina Arcega, but could not find the latter. Thus, she and Joan Camille rode their van and went to search for their family driver who at that time was at Camp Phillips Terminal. Josephine further stated that when they found their driver and her son Jackel, they proceeded to the police station. When she and her children went back to their house, Jackel found Catalina Arcega in the garden, seriously injured with a wound on her head. Catalina Arcega was still conscious when she was brought to a nearby hospital. However, she was not operated on because the hospital demanded a downpayment before proceeding with the surgery, thus, Arcega was brought to a public hospital in Cagayan de Oro City for medical attention. Unfortunately, she died the following day.

Dr. Broxil Macabinlar averred that the proximate cause of Catalina Arcega's death was the hacking of her head which resulted to a depressed skull fracture.

Constancio Hinlo, Jr. claimed that he is a civilian volunteer of Damilag, Manolo Fortich. On February 14, 2010, he asserted that he was inside the office of the Civilian Volunteer Organization when he and his fellow civilian volunteers received a call informing them that the house of Josephine Zulita was robbed. He averred that he responded to the call and walked towards Zulita's house. While on his way, he saw a green motorcycle with three riders. He affirmed that he recognized the driver of the motorcycle as appellant Ruel Namalata (Namalata). He also recognized Salga, who was riding at the back of Namalata with a black backpack. A third rider was at the back of Salga, but he could not identify him. He disclosed that he knew Namalata and Salga because they were his drinking buddies.

For Namalata, James Rio Namalata contended that on February 14, 2010, he was at the house of his parents at PCH 2, San Miguel, Manolo Fortich, Bukidnon. He avowed that he and his family spent the day watching the boxing bout of Nonito Donaire and Manuel Vargas, together with friends Marcelo Abenanza and Sherwin Pumatong. He alleged that after the third round, he decided to go to the cockpit in Libona, Bukidnon to bet on a cockfight. Thus, he borrowed his brother Namalata's green Honda motorcycle. He further maintained that he left the cockpit at around 4:20 in the afternoon, and dropped by at Camp Phillips to buy "lechon manok" and fruits. He arrived home at around 5:30 in the afternoon and found his brother Namalata having a drinking session with their friend.

Armando Cañete, an uncle of Namalata, declared that he saw James Rio Namalata at the cockpit in Libona, Bukidnon and that the latter was driving a green motorcycle.

Appellant Ruel Namalata asserted that on February 14, 2010, at around 11:00 o'clock in the morning, he came home to his parents house at PCH 2, San Miguel, Manolo Fortich, Bukidnon, after working as an assistant cook in his aunt's "carenderia" at Crossing, Libona, Bukidnon. When he arrived home, he saw his family and some friends watching the boxing bout of Donaire and Vargas in the television. He allegedly joined them. After the fight, his brother James Rio decided to go to a cockpit in Libona, Bukidnon and borrowed his green Honda motorcycle. He insisted that he spent his afternoon tending to their cockfighting roosters. Later, he averred that he had a drinking session with his friends. When his brother James Rio arrived home at around 5:30 in the afternoon, the latter also joined him and his friends. He maintained that on the said date, he never left the family home.

Marcelo Abenaza and Celso Baol, Jr. are friends of Namalata. They respectively testified that Namalata stayed at home on February 14, 2010. Both defense witnesses claimed that they had a drinking session with Namalata which started in the afternoon and lasted until the evening of February 14, 2010.

For his defense, appellant Salga maintained that on February 14, 2010, he was living with his paternal uncle Angelito Salga at Luyong

Baybayon, Barangay Mintabon, Talisayan, Misamis Oriental. At the time, he was allegedly working as a casual laborer in a fish pond being constructed in Luyong Baybayon. As such, he declared that on that fateful day, he worked from 7:00 o'clock in the morning until 5:00 o'clock in the afternoon. He insisted that he was nowhere near Damilag, Bukidnon on February 14, 2010.

Appellant Salga's testimony was corroborated by Angelito Salga, his uncle, and Cesar Pabillan, who both testified that on February 14, 2010, Salga was working at a fish pond in Luyong Baybayon, Barangay Mintabon, Talisayan, Misamis Oriental.<sup>4</sup>

### Judgment of the RTC

After trial, the RTC convicted Ruel and John of robbery with homicide on the basis of the testimonies of Joan Zulita (Joan) and Constancio Hinlo, Jr. (Constancio). Joan had testified that John was one of the three persons who robbed the victims, and pointed his gun to her head, while Constancio attested that Ruel drove off on a green motorcycle with John and another person on board. Concluding that the four perpetrators had conspired in committing robbery with homicide, the RTC disposed:

PREMISES ABOVE CONSIDERED, the court finds the two accused John Carlo Salga and Ruel "Tawing" Namalata guilty beyond reasonable doubt of Robbery with Homicide and hereby sentence each of the accused to suffer the penalty of imprisonment of reclusion perpetua, which the two accused shall continue to serve at the Davao Prison and Penal Farm, B.E. Dujali, Davao del Norte, as their preventive detention at Manolo Fortich, Bukidnon Jail, is credited to their penalty. In addition, the two accused, Salga and Namalata shall pay damages, in solidum, to the following, as follows:

₱34,000.00	- Actual damages to Josefina Zulita
6,000.00	- Actual damages to Joan Zulita
75,000.00	- Actual damages. to the heirs of Catalina Arcega for loss of the latter's life
50,000.00	- Moral damages to the heirs of Catalina Arcega
50,000.00	- Moral damages to Josefina Zulita
50,000.00	- Moral damages to Joan Camille Zulita
25,000.00	- Exemplary damages to the heirs of Catalina Arcega
25,000.00	- Exemplary damages to Josefina Zulita and Joan Camille Zulita
25,000.00	- Temperate damages to Josefina Zulita

SO ORDERED.<sup>5</sup>

<sup>4</sup> Rollo, pp. 4-8.

<sup>5</sup> CA rollo, p. 39.

### Decision of the CA

As stated, the CA affirmed the conviction of Ruel and John because the witnesses of the Prosecution were credible and had no improper motives to testify falsely against the accused; that Joan's identification of John as one of the robbers was positive; that circumstantial evidence proved Ruel's participation in the crime; and that the trial court correctly found the existence of conspiracy amongst the four individuals, rendering the act of one the act of all. The *fallo* of the assailed decision of the CA reads:

**WHEREFORE**, the appealed Decision of the Regional Trial Court, Branch 11, in Manolo Fortich, Bukidnon, finding appellants John Carlo Salga and Ruel Namalata guilty beyond reasonable doubt of Robbery with Homicide in criminal Case No. 10-07-4149, is **AFFIRMED with the following MODIFICATION**:

- 1.) To pay *in solidum* the heirs of Catalina Arcega the following amounts:
  - i. ₱75,000.00 as civil indemnity
  - ii. ₱75,000.00 as moral damages;
  - iii. ₱75,000.00 as exemplary damages; and
  - iv. ₱50,000.00 as temperate damages.
  
- 2.) To pay *in solidum* to Joan Camille Zulita the following amounts:
  - i. ₱50,000.00 as civil liability;
  - ii. ₱50,000.00 as moral damages; and
  - iii. ₱50,000.00 as exemplary damages.
  
- 3.) To pay *in solidum* as restitution the following amount stolen from the Zulita household:
  - i. ₱34,000.00 pertaining to the value of the money stolen from the vault owned by Josefina Zulita; and
  - ii. ₱6,000.00 pertaining to the amount of the cellular phone owned by Joan Camille Zulita.

Upon finality of this decision, appellant is directed to pay interest at the rate of 6% *per annum*, on all the monetary awards for damages from the date of finality until fully paid.

**SO ORDERED.**<sup>6</sup>

Hence, this appeal.

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<sup>6</sup> Rollo, pp. 21-22.

### Issue

We note that the parties have manifested herein that they would no longer be filing supplemental briefs, and have instead urged that their respective briefs filed in the CA be considered in resolving this appeal.<sup>7</sup>

In the CA, Ruel argued that Constancio was the only one who had implicated him based on having seen him driving a motorcycle with John and an unidentified person on board; and that Constancio's testimony did not suffice to support his conviction for robbery with homicide due to its being contrary to human experience.

On his part, John submitted that the elements of robbery were not proved, particularly because there was no evidence showing that any personal property had been taken from the Zulitas apart from the bare allegations of Joan; and that his out-of-court identification by Joan, being highly suggestive, was prejudicial to his rights.

In response, the Office of the Solicitor General (OSG), representing the State, insisted that the Prosecution proved all the elements of the crime beyond reasonable doubt. The OSG contended that the supposed inconsistencies John indicated did not relate to any of the essential elements of the crime and were, therefore, inconsequential; and that there were enough circumstances implicating Ruel in the commission of the crime, specifically: (1) Constancio saw Ruel driving a green motorcycle along Alae National Highway at a speed of 80 km/hour going towards Manolo Fortich, Bukidnon with John as his back rider; (2) Ruel admitted that Constancio knew him, which bolstered the latter's identification of him as one of the perpetrators of the crime; and (3) Ruel owned a Honda Wave motorcycle that was the same type of motorcycle Constancio saw him riding in the highway with John.<sup>8</sup>

### Ruling of the Court

The appeal of Ruel is meritorious, but that of John is lacking in merit.

#### 1.

#### Nature of robbery with homicide

Robbery with homicide is a special complex crime that requires the concurrence of the following elements, namely: (1) the taking of personal

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<sup>7</sup> Id. at 31-33; 44-45.

<sup>8</sup> CA *rollo*, p. 111.

property belonging to another; (2) with intent to gain; (3) with the use of violence or intimidation against a person; and (4) on the occasion or by reason of the robbery, the crime of homicide, as used in its generic sense, was committed. A conviction requires certitude that the robbery is the main purpose and objective of the malefactor, and the killing is merely incidental to the robbery. The intent to rob must precede the taking of human life but the killing may occur before, during or after the robbery.<sup>9</sup>

A special complex crime, also known as a composite crime, is composed of two or more crimes but is treated by the law as a single indivisible and unique offense for being the product of one criminal impulse. It is a specific crime with a specific penalty provided by law, and differs from the compound or complex crime under Article 48<sup>10</sup> of the *Revised Penal Code*.

The composite crime and the complex or compound crime are really distinct and different. The composition of the offenses in the composite crime is fixed by law, but the combination of the offenses in a complex or compound crime is not specified but generalized, that is, grave and/or less grave, or one offense being the necessary means to commit the other. In the composite crime, the penalty for the combination of crimes is specific, but the penalty in the complex or compound crime is that corresponding to the most serious offense, to be imposed in the maximum period. A light felony that accompanies the commission of the complex or compound crime may be subject to a separate information, but the light felony that accompanies the composite crime is absorbed.

We concur with the CA that robbery with homicide was committed. The evidence adduced by the Prosecution in that regard was ample, competent and beyond reasonable doubt. Joan positively identified John as one of the three persons who had entered their home and taken possession of her phone and money, and househelper Catalina Arcega was killed in the course or on the occasion of the robbery. Without question, the intent to rob the Zulitas preceded the taking of human life.

John assailed the credibility of Joan as a witness. Like the RTC and the CA, however, we do not find any weakness in the credibility of Joan as a witness. Nothing was presented by John to show that Joan had evil motives or ill will towards him as to falsely or unfairly incriminate him in the commission of the heinous crime of robbery with homicide. Neither did John adduce anything by which her testimony could be otherwise discredited.

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<sup>9</sup> *People v. Latam*, G.R. No. 192789, March 23, 2011, 646 SCRA 406, 410.

<sup>10</sup> Article 48. *Penalty for complex crimes*. – When a single act constitutes two or more grave or less grave felonies, or when an offense is a necessary means for committing the other, the penalty for the most serious crime shall be imposed, the same to be applied in its maximum period.



There is need to remind, moreover, that the trial court's evaluation of the credibility of witnesses is entitled to the highest respect and will not be disturbed on appeal considering that the trial court was in the better position to decide such question, having heard the witnesses themselves and observed their deportment and manner of testifying during the trial. Its findings on the credibility of witnesses and the consequent findings of fact must be given great weight and respect on appeal, unless certain facts of substance and value have been overlooked which, if considered, could change the result of the case in favor of the accused.<sup>11</sup>

We further find no violation of John's rights in relation to the out-of-court identification of him made by Joan. In *People v. Teehanke, Jr.*,<sup>12</sup> we have set stringent standards on the conduct of out-of-court identification, stating thusly:

Out-of-court identification is conducted by the police in various ways. It is done thru *show-ups* where the suspect alone is brought face to face with the witness for identification. It is done thru *mug shots* where photographs are shown to the witness to identify the suspect. It is also done thru *line-ups* where a witness identifies the suspect from a group of persons lined up for the purpose. Since corruption of *out-of-court* identification contaminates the integrity of *in-court* identification during the trial of the case, courts have fashioned out rules to assure its fairness and its compliance with the requirements of constitutional due process. In resolving the admissibility of and relying on out-of-court identification of suspects, courts have adopted the *totality of circumstances test* where they consider the following factors, *viz*: (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 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.

Under the *totality-of-the-circumstances test*, Joan's out-of-court identification of John satisfied the foregoing standards. It is hardly disputed that Joan had the actual opportunity and enough time to see John by face during the incident, from the time he entered the victims' property until he approached and ordered her to keep quiet and to get the keys to her mother's safety vault. In that span of time, her full attention was riveted to the startling incident that posed extreme threat to her own life. Given the antecedents, her identification of him as one of the robbers – whether out-of-court or in-court – was well-founded, positive, and totally reliable.

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<sup>11</sup> *People v. Bensing*, G.R. No. 138989, September 17, 2002, 389 SCRA 182, 190.

<sup>12</sup> G.R. Nos. 111206-08, October 6, 1995, 249 SCRA 54, 95.

In contrast, Ruel's conviction rested on circumstantial evidence supposedly establishing him as one of the robbers. The CA concluded that Ruel was guilty based on the following account of his part in the incident:

In the present case, the circumstances pointing to Namalata's guilt are as follows: (1) on February 14, 2010, at around 4:00 o'clock in the afternoon, the house of Josefina Zulita was robbed; (b) prosecution witness Hinlo, a civilian volunteer of Damilag, Manolo Fortich, was in the office of the Civilian Volunteer Organization, when he and his fellow civilian volunteers received a call informing them of the robbery; (3) he immediately responded; (4) while on his way, he saw an approaching green motorcycle, being driven at a very fast pace; (5) he recognized the driver of the motorcycle as appellant Namalata; (6) he also recognized Salga, who was riding at the back of Namalata with a black backpack; (7) both appellants were together with an unidentified third rider, who was riding at the back of Salga; and he very well knew Namalata and Salga because they were his drinking buddies.<sup>13</sup>

We cannot concur with the CA's conclusion against Ruel.

For conviction of the accused, circumstantial evidence is deemed sufficient if the conditions fixed by Section 4, Rule 133 of the *Rules of Court* are complied with, viz.:

Section 4. *Circumstantial evidence, when sufficient.* — Circumstantial evidence is sufficient for conviction if:

- (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.

The peculiarity of circumstantial evidence is that the series of events pointing to the commission of a felony is appreciated not singly but *collectively*. The guilt of the accused cannot be deduced from scrutinizing just one particular circumstance, for there must be a combination of several circumstances that when put together reveals a convincing picture pointing to no other conclusion than that the accused was the author of the crime. In *People v. Monje*,<sup>14</sup> the guidelines in appreciating the probative value of circumstantial evidence were laid down, to wit: (a) the court should act upon the matter with caution; (b) all the essential facts must be consistent with the hypothesis of guilt; (c) the facts must exclude every other theory but that of guilt of the accused; and (d) the facts must establish with certainty the guilt

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<sup>13</sup> *Rollo*, p. 14.

<sup>14</sup> G.R. No. 146689, September 27, 2002, 390 SCRA 160, 177.

of the accused as to convince beyond reasonable doubt that he was the perpetrator of the offense.

Here, the circumstances listed by the CA were insufficient to produce the conviction of Ruel. The lower courts and the Prosecution gave too much weight and emphasis to the fact that Constancio had seen Ruel speeding away on the motorcycle with John and another person on board. The scene, to a detached observer, was certainly far from unequivocal, for it was openly susceptible to various interpretations, including some that would not implicate Ruel in the commission of the robbery with homicide. For one, there is the possibility that Ruel only happened to pass by, and that John and the other person – both of whom Ruel most probably knew – only asked to ride tandem with him. Such possibility, even if highly probable, was still innocent without a clear showing of his deeper involvement in the criminal enterprise. Verily, the guilt of Ruel could not be fairly deduced from scrutinizing just one or two particular circumstances, for the law demanded a combination of several circumstances that together paint a convincing picture of his being the author of the crime.

## 2.

### **The Prosecution did not credibly establish the conspiracy between John and Ruel**

In ruling on whether or not there was conspiracy between Ruel and John, the CA observed:

In the instant case, conspiracy was clearly manifested in the concerted efforts of the malefactors. Appellants and their unidentified cohort simultaneously barged inside the gate of the Zulitas. And, while Salga and his unidentified cohort accosted Joan Camille and demanded for her to open the vault inside her room and turn over the money inside the vault, Namalata was outside standing watch. After taking the valuables inside the house, appellants and their unidentified cohort ran towards a waiting motorcycle and escaped together.<sup>15</sup>

To the CA, Ruel was the fourth member who had stood outside the home of the victims to serve as the lookout while John and the two unidentified individuals committed the robbery inside the Zulitas' abode.

The conviction of John and Ruel by the RTC was based on the testimonies of the Joan and Constancio. Joan positively identified John as one of the three persons who had entered the yard and then pointed a gun at her. Ruel was seen by Constancio after the robbery driving the green motorcycle with John and an unidentified person on board. Affirming the

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<sup>15</sup> *Rollo*, p. 18.

RTC, the CA declared that a conspiracy to commit the robbery against the Zulitas had existed among Ruel, John and the two unidentified persons.

The declaration of the existence of the conspiracy among Ruel, John and the two unidentified persons lacked firm factual foundation.

Conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it.<sup>16</sup> Where the several accused were shown to have acted in concert at the time of the commission of the offense, and their acts indicated that they had the same purpose or common design and were united in the execution, conspiracy is sufficiently established. The State must show at the very least that all participants performed specific acts with such closeness and coordination as to indicate a common purpose or design to commit the felony.<sup>17</sup> To be held guilty as a co-principal by reason of conspiracy, therefore, the accused must be shown to have performed an overt act in pursuance or in furtherance of the conspiracy. The overt act or acts of the accused may consist of active participation in the actual commission of the crime itself, or of moral assistance to his co-conspirators by moving them to execute or implement the criminal plan.<sup>18</sup>

Conformably to the foregoing, we consider the findings of the lower courts on the existence of the conspiracy to be factually and legally unwarranted. Joan, although present at the scene of the crime, never identified Ruel as part of the group of robbers. In fact, no witness placed him at the crime scene during the entire period of the robbery. If we have always required conspiracy to be established, not by conjecture, but by positive and conclusive evidence, then it was plainly speculative for the CA to count Ruel as the fourth member of the group of robbers and even to name him as the robbers' lookout outside the house despite the absence of evidence to that effect. On the contrary, the records bear out that only Constancio saw Ruel, but such sighting of Ruel was *after the robbery* when he was already driving the green motorcycle with John and another person on board. This was not the overt act necessary to make Ruel a part of the conspiracy.

The character of the overt act as the essential predicate for criminal liability has been explained in *People v. Lizada*:<sup>19</sup>

An overt or external act is defined as some physical activity or deed, indicating the intention to commit a particular crime, more than a mere planning or preparation, which if carried out to its complete termination following its natural course, without being frustrated by

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<sup>16</sup> Article 8, *Revised Penal Code*.

<sup>17</sup> *People v. Bautista*, G.R. No. 188601, June 29, 2010, 622 SCRA 524, 540.

<sup>18</sup> *Ladonga v. People*, G.R. No. 141066, February 17, 2005, 451 SCRA 673, 685.

<sup>19</sup> G.R. No. 143468-71, January 24, 2003, 396 SCRA 62, 94-95.

external obstacles nor by the spontaneous desistance of the perpetrator, will logically and necessarily ripen into a concrete offense. **The *raison d'être* for the law requiring a direct overt act is that, in a majority of cases, the conduct of the accused consisting merely of acts of preparation has never ceased to be equivocal; and this is necessarily so, irrespective of his declared intent. It is that quality of being equivocal that must be lacking before the act becomes one which may be said to be a commencement of the commission of the crime, or an overt act or before any fragment of the crime itself has been committed, and this is so for the reason that so long as the equivocal quality remains, no one can say with certainty what the intent of the accused is.** It is necessary that the overt act should have been the ultimate step towards the consummation of the design. It is sufficient if it was the “first or some subsequent step in a direct movement towards the commission of the offense after the preparations are made.” **The act done need not constitute the last proximate one for completion. It is necessary, however, that the attempt must have a causal relation to the intended crime. In the words of Viada, the overt acts must have an immediate and necessary relation to the offense.** (Bold underscoring supplied for emphasis)

We need to stress, too, that the community of design to commit an offense must be a conscious one;<sup>20</sup> and that conspiracy transcends mere companionship.<sup>21</sup> Hence, mere presence at the scene of the crime does not in itself amount to conspiracy. Even knowledge of, or acquiescence in, or agreement to cooperate is not enough to constitute one a party to a conspiracy, absent any active participation in the commission of the crime with a view to the furtherance of the common design and purpose.<sup>22</sup>

In view of the foregoing, Ruel’s mere act of driving of the motorcycle with John and the unidentified person on board did not amount to an overt act indicating his having conspired in committing the robbery with homicide. Consequently, he was not John’s co-conspirator. He must be acquitted, for the evidence of the Prosecution to establish his guilt for the robbery with homicide was truly insufficient.

### 3. Final word

As a final word, the Court considers the awards of damages granted by the CA to have conformed to *People v. Jugueta*.<sup>23</sup> Hence, the awards are all upheld.

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<sup>20</sup> *Bahilidad v. People*, G.R. No. 185195, March 17, 2010, 615 SCRA 597, 606.

<sup>21</sup> *People v. Masinag*, G.R. No. 144621, May 9, 2003, 403 SCRA 167, 176.

<sup>22</sup> *Id.* at 686.

<sup>23</sup> G.R. No. 202124, April 5, 2016, 788 SCRA 331.

**WHEREFORE**, the Court **ACQUITS** accused **RUEL “TAWING” NAMALATA**, and, accordingly, **ORDERS** his immediate release from confinement unless he is otherwise legally confined for another cause; **AFFIRMS IN ALL RESPECTS** the decision promulgated on April 7, 2017 as to accused **JOHN CARLO SALGA**, accordingly, **SENTENCES** him to pay to the heirs of the late Catalina Arcega the damages fixed by the Court of Appeals, and to indemnify Joan Camille Zulita in the amounts stated in the decision promulgated on April 7, 2017, plus legal interest of 6% *per annum* on all such damages reckoned from the finality of this decision until full satisfaction; and **DIRECTS** accused **JOHN CARLO SALGA** to further pay the costs of suit.

Let a copy of this decision be furnished to the Superintendent of the Davao Prison and Penal Farm in B.E. Dujali, Davao del Norte for immediate implementation.

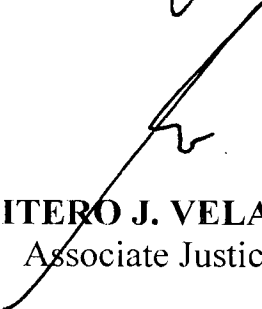
The Superintendent of Davao Prison and Penal Farm is directed to report the action taken to this Court within five days from receipt of this decision.

**SO ORDERED.**

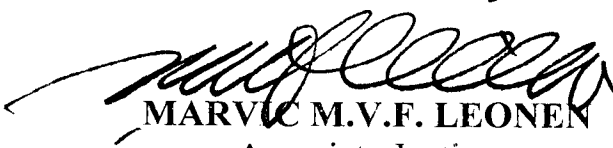


LUCAS P. BERSAMIN  
Associate Justice


**WE CONCUR:**



PRESBITERO J. VELASCO, JR.  
Associate Justice



MARVIC M.V.F. LEONEN  
Associate Justice



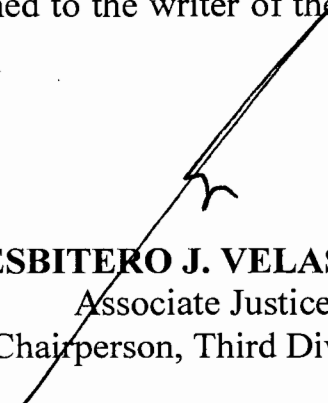
SAMUEL R. MARTIRES  
Associate Justice



ALEXANDER G. GESMUNDO  
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.



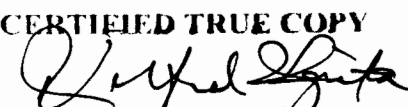
**PRESBITERO J. VELASCO, JR.**  
Associate Justice  
Chairperson, Third Division

**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.



**ANTONIO T. CAPIO**  
Acting Chief Justice

**CERTIFIED TRUE COPY**  
  
**WILFREDO V. LARIAN**  
Division Clerk of Court  
Third Division

AUG 17 2018