Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff-Appellee,

-versus-

EDGARDO CATACUTAN *y* MORTERA ALIAS "BATIBOT", "ENZO" & "GERRY",
Accused-Appellant.

G.R. No. 260731

Present:

LEONEN, *SAJ.*, *Chairperson,*
LAZARO-JAVIER,
LOPEZ, M.,
LOPEZ, J., and
KHO JR., *JJ.*

Promulgated:

FEB 13 2023

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DECISION

LAZARO-JAVIER, *J.*:

The Case

The Appeal assails the Decision[1] dated January 26, 2021 of the Court of Appeals in CA-G.R. CR-HC No. 11631, affirming the conviction of appellant Edgardo Catacutan *y* Mortera alias "Batibot," "Enzo" & "Gerry" for

[1] Penned by Associate Justice Japar B. Dimaampao (now a member of this Court) and concurred in by Associate Justices Pedro B. Corales and Florencio M. Mamauag, Jr., *rollo*, pp. 8–22.

robbery with homicide under Article 294, paragraph (1) in relation to Article 293 of the Revised Penal Code (RPC).

Antecedents

In Criminal Case No. Q-08-153138, appellant was charged with Robbery with Homicide, *viz.*:[2]

> That on or about the 24th day of September 2007, in Quezon City, Philippines, the said accused, with intent to gain and by means of violence and intimidation upon person, did then and there, willfully, unlawfully and feloniously, rob Alexander Tan Ngo, in the following manner, to wit: On the date and place aforementioned, said accused went to the rented room of Alexander Tan Ngo located at 128 Araneta Avenue, this City, and with treachery, evident premeditation and abuse of superior strength, stabbed said offended party several times on the different parts of his body and thereafter, took, robbed and carried away one (1) Philips PET1002 portable DVD player, one (1) Sony Ericson Z611, one (1) Fossil watch, one (1) creative ZEN vision M 30G multimedia player, one (1) Sony cybershot DSC-T1 5MP digital camera and cash in the total amount still undetermined, and as a result thereof, said Alexander Tan Ngo sustained serious and mortal wounds which were the direct and immediate cause of his death, to the damage and prejudice of the heirs of said Alexander Tan Ngo.
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> The above attendant circumstances were present because accused planned the commission of the crime prior to its execution until its commission, consenciously (sic) adopting sudden and unexpected attack upon his victim to ensure commission of the crime without risk to himself and taking advantage of his superior strength over his victim.
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> CONTRARY TO LAW.[3]

On arraignment, appellant pleaded not guilty.[4]

The Prosecution's Version

The prosecution presented the following witnesses: (1) Alfredo Ortiz Koh (Koh), (2) Robert John Ramos (Robert), (3) Mark P. Adalid (Mark), (4) National Bureau of Investigation (NBI) Agent Valiant Raganit (Agent Raganit), (5) Police Chief Inspector Annalee Palima (PCI Palima), and (7) Gerry Ngo (Ngo).

Koh testified that he was a security guard in Alexander Tan Ngo's (Alexander) place, the PND Apartelle. On September 24, 2007, starting 7:00 a.m., he was on duty at the PND Apartelle. At 4:25 p.m., he noted the arrival

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2 *Id.* at 24.
3 *Id.* at 24–25.
4 *Id.* at 25.

of Alexander in his logbook, and at 6:00 p.m., the arrival of Alexander's visitor, appellant, who at the time identified himself as "Gerry." Since appellant failed to show any proof of identity upon request, he (Koh) accompanied him to Alexander's unit. There, Alexander acknowledged appellant so he returned to his post.[5] The next day or on September 25, 2007, when he saw appellant leaving the Apartelle at 6:05 a.m., he entered the same in his logbook as appellant's time of departure. His duty ended at 7:00 a.m.[6]

Koh identified the Security Guard logbook, photocopies of his logbook entries,[7] and his *Salaysay*.[8]

Robert testified that he was Alexander's classmate in the University of the East Ramon Magsaysay (UERM) College of Medicine. On September 25, 2007, he and his classmates noticed that the ever-present and punctual Alexander failed to show up the entire day at school, starting with his class at 8:00 a.m. Since Alexander was a top student, his absence did not go unnoticed by his classmates, especially when he failed to answer their several text messages and calls.[9]

Thinking that Alexander might be sick, Robert and his classmates, Chester Nicodemus (Chester), John Christian Manuntag (John) and Wayne Perez (Wayne), decided to visit him after their 3:00 p.m. class. From school, they walked to Alexander's apartment nearby. When they reached his unit, they knocked at the door several times but no one answered. They thus turned the knob and discovered that the door was unlocked. When Robert opened the door, he saw droplets of blood on the floor of the room. The air conditioner and television were on. The television was on high volume. Seeing the place akin to a crime scene in a movie, Robert opted to stay outside while his classmates proceeded inside. A few seconds later, he heard them shouting "call the police!."[10]

In a matter of minutes, at least two police officers arrived and started taking pictures of the crime scene. These pictures were shown to him and the rest of his classmates. They were then taken to Camp Crame for investigation. On the assumption that they will all be giving the same account of the incident, only Chester was required by the police to execute the *Salaysay* dated September 25, 2007.[11]

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5 *Id.*
6 *Id.* at 26.
7 *Id.* at 25–26.
8 *Id.* at 28.
9 *Id.* at 26.
10 *Id.*
11 *Id.*

Mark testified that he was a neighbor, grade school, and high school classmate of appellant, whom he called "Batibot." Appellant lived with his mother, Sharon, and brother Nonoy, at Milagros Street.[12] He was with appellant and their friend, Benjie, outside the Jollibee on Aurora Boulevard when appellant told him that Alexander, who was eating inside the store, had been looking at him. When Alexander went out of Jollibee, appellant followed him, introduced himself, and got his phone number. Since then, he and Alexander had become 'textmates.'[13]

Sometime in October 2007, Mark, appellant, and their friend Jose Ramon Mitra (JR) had a drinking spree at the Ilocana's *Carinderia* along Aurora Boulevard near UERM. Appellant had with him a slim, silver Sony cybershot digital camera (digicam). He then showed him (Mark) the images taken and stored in the digicam. He (Mark) particularly remembered the pictures he saw because he was able to identify famous people like Manny Pacquiao and the song composer Lito Camo. He also remembered the picture of the snow taken abroad.[14] Too, there were some pictures of Alexander in the digicam, whom appellant referred as "*yung bading.*" He then narrated to him (Mark) how he killed the *bading*.

Appellant went to Alexander's apartment. The security guard there asked his name and accompanied him to Alexander's room. He and Alexander then had sex and when the latter fell asleep, he got a five-inch knife from the kitchen. He went back to bed with the knife. When Alexander embraced him, he pointed the knife at Alexander. "*Nanlaban ang bading.*" After he got hold of the knife that fell on the side of the bed, he stabbed Alexander repeatedly. To ensure his death, he held his chin and slashed his neck. He then went through Alexander's things in the room, took the bracelet, photo ipod, cellphone, digicam, and money he found.[15]

Appellant also told Mark that he wanted to take Alexander's laptop but it would look obvious inside his hooded black jacket. Too, he divulged that he hid the kitchen knife inside the drainage of the comfort room and flushed his briefs in the toilet bowl. Apparently, appellant got mad because Alexander only paid him PHP 500.00 instead of the agreed PHP 1,000.00 for their sexual intercourse.[16]

Subsequently, Mark came to know that a certain "Sheryl" got interested in buying the digicam from appellant. He met "Sheryl" at the SM Centerpoint after she texted him about "Enzo," referring to appellant. Appellant avoided meeting her, feeling that a policeman was with her. Mark's phone number at

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12 *Id.* at 27.
13 *Id.*
14 *Id.*
15 *Id.* at 27–28.
16 *Id.* at 28.

the time was 09194219712. Appellant was using a Smart cell number while "Sheryl" was using a Globe cell number.[17]

Eventually, he was requested by the NBI to assist in apprehending appellant. They thus went to appellant's house in Sta. Mesa and he (Mark) pretended to buy *shabu*. When appellant came out of the house, he was arrested by the NBI agents.[18]

Mark identified the digicam and the printouts of photographs stored therein, including those of Alexander.[19]

Agent Raganit testified that he is a Special Investigator of the NBI and that during the course of the investigation, Koh was able to identify appellant as Alexander's visitor on the day he was found dead among the six pictures shown to him by the NBI.[20] Mark told the NBI, Roberto Gaza, the maintenance man at the PND Apartelle, helped Agent Raganit to recover the knife hidden inside the bell trap of the toilet in Alexander's apartment.[21] He described that the knife used in killing Alexander measured 9.5 inches including the handle.[22]

Agent Raganit identified the 9.5-inch knife recovered from Alexander's apartment and the pictures shown to Koh.[23]

PCI Palima testified that she was a medico-legal officer assigned to the Philippine National Police Crime Laboratory. She interpreted the Medico-Legal Report dated September 28, 2007 which was prepared by Dr. Dean Cabrera, who conducted an autopsy on Alexander's cadaver. Based on the post-mortem examination on Alexander's body, he sustained 25 injuries, three of which were fatal wounds. The autopsy disclosed that the injuries were caused by a sharp-edged or sharp-pointed instrument.[24]

Private complainant **Ngo** testified that he was Alexander's older brother. He came to know of Alexander's death around 4:30 p.m. of September 25, 2007.[25]

A few days later, his sister, Analyn Ngo, informed him that she received a blank text message from an unknown Smart cellphone number. He

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17 *Id.*
18 *Id.*
19 *Id.* at 27.
20 *Id.* at 28.
21 *Id.*
22 *Id.*
23 *Id.*
24 *Id.* at 12.
25 *Id.*

instructed her to call the number but no one answered. His own attempt yielded the same result. On October 1, 2007, he received a text message from the same Smart number, who identified himself as Enzo Corralez (Enzo), allegedly a third year BS Math student of the Far Eastern University (FEU). He was directed by the Criminal Investigation and Detection Group (CIDG) to maintain his communication with Enzo under the pretext of a certain "Sheryl," a second year Nursing student of the University of Sto. Tomas.[26] There was also one instance when Enzo used a Smart number, 09194219712, to text him, which turned out to belong to Mark.[27]

Considering the condition then of his old Motorola cellphone Model No. V-6, which eventually broke, Gerry started transcribing the text messages between him and Enzo. In one of them, Enzo offered to sell a Sony cybershot T-7 silver digicam for PHP 5,000.00. Too, he shared that he had just sold a creative ipod. Alerted by such message and since a creative ipod and a Sony digicam were two of the things missing in Alexander's apartment at the time of his death, he, still pretending to be Sheryl, manifested that his classmates from FEU might be interested in buying the digicam.[28]

Consequently, Enzo and Sheryl agreed to meet at the SM Centerpoint for the latter to buy the Sony digicam. One of the police assets from CIDG pretended to be Sheryl. Enzo, however, did not show up. Instead, it was Mark who met with Sheryl and her companion, Gina.[29]

Around 9:09 p.m. on October 17, 2007, Enzo texted Sheryl, "*may utak talaga po ako, kung wala akong utak, nahuli mo na ako asset, he he he....*" After this message, the plot to entrap Enzo fell apart. Banking on the fact that Gina, the police asset, was able to meet Mark at SM Centerpoint, Gerry encouraged her to keep the communication going. Gina then learned where Mark lived and where he could be found. Gerry thus sought the NBI's help and with their assistance, they invited Mark for questioning. After an assurance of his safety, Mark revealed that Enzo is really appellant and the name Enzo was only used for the transaction between him and Sheryl. Thereafter, he told the NBI everything he came to know and learn from appellant.[30]

Gerry identified his Globe cellphone number used in the exchanges between Enzo and Sheryl and the transcribed text messages between them.[31]

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26 *Id.* at 12–13.
27 *Id.* at 29.
28 *Id.*
29 *Id.*
30 *Id.*
31 *Id.*

The Defense's Version

Appellant denied the charge and asserted his innocence. He riposted that on September 24 and 25, 2007, he was just with his live-in partner selling barbecue outside their house in Sta Mesa. Too, he belied Mark's statements and pointed out that they constantly fought back in school.[32]

Ruling of the Regional Trial Court

By Amended Decision[33] dated June 29, 2018, the Regional Trial Court of Quezon City, Branch 101, found appellant guilty of Robbery with Homicide, *viz.*:

> WHEREFORE, EDGARDO CATACUTAN *Y* MORTERA alias "BATIBOT", "ENZO" & "GERRY" is found GUILTY beyond reasonable doubt of the crime of ROBBERY with HOMICIDE and is hereby sentenced to suffer the penalty of *reclusion perpetua* without eligibility for parole.
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> Edgardo Catacutan y [Mortera] [is] hereby ordered to pay the heirs of Alexander Tan Ngo the following:
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> 1. the sum of P100,000.00 as civil indemnity;
> 2. the sum of P100,000.00 as moral damages; and
> 3. the sum of P100,000.00 as exemplary damages.
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> all with legal interest at the rate of six (6%) per annum from the finality of the judgment until full payment thereof.
>
> SO ORDERED.[34]

The trial court found that all the elements of robbery with homicide are present, thus: 1) the possession by appellant of the digicam belonging to Alexander established the first and second elements of taking and intent to gain; 2) the stabbed wounds on Alexander's cadaver established the third element of violence upon persons; and 3) Alexander's death established that the fourth element, homicide, was committed.[35]

Albeit no direct evidence was adduced by the State to establish appellant's guilt, the collective testimonies of the prosecution witnesses constitute an unbroken chain that lead to the fair and reasonable conclusion pointing to appellant, to the exclusion of others, as the author of the crime.[36] The State, however, failed to prove the presence of the aggravating

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32 *Id.* at 14.
33 Penned by Presiding Judge Evangeline C. Castillo-Marigomen, *id.* at 24–33.
34 *Id.* at 32.
35 *Id.* at 31.
36 *Id.*

circumstances of evident premeditation, treachery, and abuse of superior strength.[37]

Ruling of the Court of Appeals

Under Decision[38] dated January 26, 2021, the Court of Appeals affirmed. Apart from finding that all elements of the crime charged were indeed present, it ruled that the Information filed against appellant clearly indicted him for the special complex crime of robbery with homicide, hence, there was no violation of his right to be informed of the nature and cause of the accusation against him.[39]

More importantly, although there was no eyewitness to the crime, the State adduced sufficient circumstantial evidence, such as Koh's positive identification of appellant and Mark's narration of the incident as disclosed to him by appellant, to establish appellant's guilt beyond reasonable doubt.[40] Finally, the Court of Appeals admitted Mark's testimony as non-hearsay, classifying the same as an independently relevant statement, which was only intended to prove the fact that appellant made the statements relating to the incident.[41]

The Present Appeal

Appellant now pleads anew for his acquittal.

Under Resolution[42] dated July 20, 2022, the Court directed the parties to file their supplemental briefs. The Office of the Solicitor General[43] and the Public Attorney's Office[44] manifested that they are adopting their respective briefs before the Court of Appeals as their supplemental briefs.

In his Brief,[45] **appellant argues**:

The Information filed against him is worded in a manner that it charged him with separate crimes of murder and robbery instead of the special complex crime of robbery with homicide,[46] since it failed to allege that he first intended to rob Alexander and that the latter died on occasion of or by reason

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37 *Id.* at 32.
38 *Id.* at 8–22.
39 *Id.* at 15.
40 *Id.* at 20–21.
41 *Id.* at 21.
42 *Id.* at 34.
43 *Id.* at 42–44.
44 *Id.* at 37–39.
45 CA *rollo*, pp. 46–65.
46 *Id.* at 52.

of the robbery. On the contrary, the allegation demonstrates that he killed Alexander first then took his belongings. As a result, his right to be informed of the nature and cause of the accusation against him was violated.[47]

In any case, the State failed to prove that he committed the crime charged. Koh's testimony lacks credibility since: (1) the original of the Security Guard logbook was never presented, violating the Best Evidence Rule; (2) his asseveration that he asked for appellant's identification is belied by Robert's admission that on previous occasions when he (Robert) went to Alexander's apartment, he was never asked by the security guard to surrender any identification card;[48] and (3) it is improbable that he (Koh) was on duty for 24 hours or from 7:00 a.m. of September 24 up to 7:00 a.m. of September 25, 2007.[49]

Too, Koh's identification of appellant among the six photos presented to him by the NBI was highly irregular since Mark's *Karagdagang Sinumpaang Salaysay*, containing the photo of the appellant, was executed on the same day. It is thus possible that Koh identified appellant as Alexander's visitor on the day of his death only because of the impermissible suggestion arising from Mark's affidavit.[50] More, Mark's testimony as to the circumstances of Alexander's death is purely hearsay and has no probative value. Clearly, there is no sufficient evidence on record, whether direct or circumstantial, which establishes appellant's guilt beyond reasonable doubt,[51] especially because none of the stolen items, including the digicam, were recovered from him.[52]

On the other hand, **the Office of the Solicitor General ripostes:**

Appellant himself narrated the events of the incident when Gerry confronted and asked him to recount what happened after he was arrested. His statements corroborated Mark's testimony of the incident. He also admitted that he had already sold the stolen items which is why they can no longer be recovered from his possession.[53]

Contrary to appellant's defense, Koh's testimony is categorical and convincing. The arguments against his credibility are untenable: 1) even assuming that, indeed, Robert and his companions were not asked to surrender their identification cards during previous visits to Alexander's apartment, this cannot be used as evidence to prove that Koh did not regularly implement

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47 *Id.* at 53.
48 *Id.* at 55.
49 *Id.* at 56.
50 *Id.* at 57.
51 *Id.* at 58.
52 *Id.* at 62.
53 *Id.* at 110, citing TSN dated May 26, 2015, pp. 13–15.

such security procedure, especially considering the rule of *res inter alios acta;* 2) appellant cannot now assail the admissibility of the photocopies of the Security Guard logbook entries, failing to object to the same during trial; and 3) it is not improbable that Koh had been on duty for 24 hours since security officers may be asked to render overtime work especially when the reliever fails to arrive for his/her duty.[54]

Significantly, Koh identified appellant sans any prior improper suggestion. To recall, he identified appellant among photographs of several other people without any showing that he was informed by the CIDG, NBI or police officers that Mark had earlier pointed to appellant as the perpetrator of the crime. Other than the coinciding date of the same with the execution of Mark's *Karagdagang Sinumpaang Salaysay,* no questionable circumstance was raised to establish any irregularity in Koh's identification of appellant. At any rate, any defect during the out-of-court identification was cured when Koh identified appellant in court.[55] Too, appellant's confession to Mark is admissible as evidence for being part of *res gestae*.[56]

Clearly, the following uncontroverted circumstances, when taken together, establish appellant's guilt beyond reasonable doubt: 1) Alexander was last seen alive in the company of appellant; 2) after this, Alexander's dead body was found inside his unit at PND Apartelle with several of his possessions missing; and 3) Alexander's missing Sony cybershot digital camera was in appellant's possession after the incident.[57]

Finally, appellant should be convicted of the separate crimes of homicide and theft since evidence on record failed to substantiate that appellant intended to rob Alexander before killing him. In fact, it is shown that he first stabbed Alexander several times before he decided to go through his things and steal some items. Contrary to appellant's claim, however, this does not violate his right to be informed of the nature of the charge against him since he was sufficiently informed of the charges in the Information, i.e., he killed Alexander and stole his personal properties.[58]

Issue

Did appellant commit the special complex crime of Robbery with Homicide under Article 294, paragraph (1) of the RPC?

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54 *Id.* at 112–114.
55 *Id.* at 114–115.
56 *Id.* at 117–118.
57 *Id.* at 121.
58 *Id.* at 121–122.

Ruling

Mark's testimony regarding the commission of the crime as relayed by appellant is admissible as an admission against interest

To begin with, both the Regional Trial Court and the Court of Appeals uniformly accorded weight to Koh's testimony that he was the security guard on duty in the victim's apartment and he recorded appellant's arrival to and departure from the said apartment on the material dates in question. Too, both courts gave credence to the testimony of Mark pertaining to appellant's detailed narration or admission to him of how appellant committed the crime. But is such testimony admissible in evidence? The Court of Appeals ruled in the affirmative since the same, being purportedly an independently relevant statement, is an exception to the hearsay rule.

We cannot agree to this characterization by the appellate court. In *People v. Lobrigas*,[59] the Court clarified, *viz.*:

> **Under the doctrine of independently relevant statements, only the fact that such statements were made is relevant and the truth or falsity thereof is immaterial.** The hearsay rule does not apply, hence, the statements are admissible as evidence. Evidence as to the making of such statement is not secondary but primary, for the statement itself may constitute a fact in issue or be circumstantially relevant as to the existence of such fact. (*Emphasis, underscoring supplied and citations omitted*).

Consequently, a statement may be considered an independently relevant statement **only when** what is sought to be proven by its presentation is the fact that it was made, regardless of whether what was stated is in fact true. In this case, however, Mark's testimony regarding appellant's admission was proffered precisely to establish the events of Alexander's death and appellant's involvement therein. In fine, it was offered as an assertion of the **truth** of the matters alleged therein.

Section 27, Rule 130 of the Rules of Court, as amended, states "[t]he act, **declaration**, or omission **of a party** as to a relevant fact **may be given in evidence** against him or her." This rule is based on the notion that no person would make any declaration against himself or herself, unless it is true.[60] In *Unchuan v. Lozada*,[61] the Court explained that admissions against interest are admissible, albeit they are hearsay:

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59 442 Phil. 382, 392 (2002) [Per J. Ynares-Santiago, First Division].

60 *People v. Guting*, 769 Phil. 538, 550 (2015) [Per J. Leonardo-De Castro, First Division].

61 603 Phil. 410, 424–425 (2009) [Per J. Quisumbing, Second Division].

> xxx Section 26 of Rule 130 provides that "the act, declaration or omission of a party as to a relevant fact may be given in evidence against him. It has long been settled that **these admissions are admissible even if they are hearsay**. Indeed, there is a vital distinction between admissions against interest and declaration against interest. **Admissions against interest are those made by a party to a litigation or by one in privity with or identified in a legal interest with such party, and are admissible whether or not the declarant is available as a witness.** Declaration against interest are those made by a person who is neither a party nor in privity with a party to the suit, are secondary evidence and constitute an exception to the hearsay rule. They are admissible only when the declarant is unavailable as a witness. **Thus, a man's acts, conduct, and declaration, *wherever made*, if voluntary, are admissible against him, for the reason that it is fair to presume that they correspond with the truth, and it is his fault if they do not**. (*Emphasis, underscoring supplied and citations omitted).*

Indeed, the central issue involved under the hearsay rule is the trustworthiness and reliability of hearsay evidence, since the statement testified to was not given under oath or solemn affirmation, and more compellingly, the declarant was not subjected to cross examination by the opposing party to test his or her perception, memory, veracity and articulateness, on whose reliability the entire worth of the out-of-court statement depends.[62] However, in admissions against interest, the admission is made by a **party** to a litigation. Verily, the rule excluding hearsay testimony, which rests mainly on the ground that there is no opportunity to cross-examine the person to whom statements or writings are attributed,[63] does not apply.

In *People v. Reyes,*[64] the Court ordained that the conversation among the accused, mentioning that they had shot the victims, which was overheard by the prosecution witness, is admissible in evidence as an admission.

To be admissible as an exception to the hearsay rule, an admission must (a) involve matters of fact, and not of law; (b) be categorical and definite; (c) be knowingly and voluntarily made; and (d) be adverse to the admitter's interests, otherwise it would be self-serving and inadmissible.[65] Appellant's admission as relayed by Mark before the trial court is thus admissible.

First, it involves matters of fact, i.e., the circumstances of how Alexander was killed and robbed and how appellant committed the same;

Second, his statements were categorical and definite. In fact, appellant's narration of the events was so replete with details consistent with

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62 *People v. Estibal*, 748 Phil. 850, 876–877 (2014) [Per J. Reyes, Third Division].

63 *Marina Port Services, Inc. v. American Home Assurance Corporation*, 766 Phil. 466, 483 (2015) [Per J. Del Castillo, Second Division].

64 82 Phil. 563 (1949) [Per J. Bengzon].

65 *Lacbayan v. Samoy, Jr.*, 661 Phil. 306, 318 (2011) [Per J. Villarama, Third Division].

other testimonies and evidence adduced by the prosecution, i.e., recovery of the knife from Alexander's comfort room where appellant said he hid it, the laptop he intended to steal but left in the apartment as found by authorities, and the findings in the autopsy of Alexander's cadaver, which convinces the Court that the same could not have simply been concocted by the witness.

Third, appellant consciously and voluntarily shared the story to his friends during their drinking spree; and

Fourth, his admission is undoubtedly adverse to his legal interest as it tends to establish his guilt.

Appellant cannot be convicted of the complex crime of Robbery with Homicide

Thus, the totality of the evidence presented by the prosecution duly established the following facts: (1) appellant became 'textmates' with Alexander after he obtained the latter's cellphone number outside Jollibee, Aurora Boulevard while he was hanging out with friends Mark and JR;[66] (2) on September 24, 2007, at 6:00 p.m., he went to Alexander's unit at PND Apartelle where he was asked by security guard Koh for identification, failing which, the latter escorted him to Alexander's doorstep where the latter acknowledged him as his guest;[67] (3) he and Alexander had sex and when he (Alexander) fell asleep, he grabbed a knife from the kitchen, returned to bed, and stabbed Alexander repeatedly when the latter tried to embrace him; (4) to ensure Alexander's death, he slashed his neck; (5) then, he rummaged through Alexander's unit and took his belongings, such as bracelet, ipod, cellphone, Sony cybershot T-7 digicam, and money; (6) he also hid the knife in the drainage of the comfort room and flushed his briefs in the toilet bowl; (7) he killed Alexander because the latter only paid him PHP 500.00 instead of the promised PHP 1,000.00 in exchange for sex;[68] (8) he left Alexander's Apartelle at 6:05 a.m. of September 25, 2007;[69] (9) Alexander's dead body was discovered in the afternoon of the same day when Robert and his classmates visited Alexander's place to check on him as he had been absent from class the entire day and could not be reached via text or call;[70] (10) appellant was identified as Alexander's visitor on September 24 to 25, 2007 by security guard Koh;[71] and (11) appellant himself admitted to Mark during their drinking spree that he killed Alexander and stole his belongings.[72]

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66 *Rollo*, p. 27.
67 *Id.* at 25.
68 *Id.* at 27–28.
69 *Id.* at 26.
70 *Id.* at 26 and 28.
71 *Id.* at 27.
72 *Id.* at 27–28.

As shown, appellant killed Alexander then stole his belongings. These, however, are insufficient to convict appellant of the special complex crime of Robbery with Homicide which requires the following elements: (1) the taking of personal property is committed with violence or intimidation against persons; (2) the property taken belongs to another; (3) the taking is with intent to gain or *animo lucrandi*; and (4) by reason or on occasion of the robbery, homicide is committed.[73]

We focus on the **fourth element** of the crime; the killing was by reason of or on occasion of robbery.

In Robbery with Homicide, the robbery is the central 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.[74]

Here, the prosecution failed to establish that appellant's original intent was to steal from Alexander. The facts merely established two things: (1) appellant killed him; and (2) then took several of his belongings. From these circumstances, it is unclear what appellant's intention was when he caused Alexander's death.

Also, appellant disclosed to Mark that he killed Alexander because he felt shortchanged after receiving only PHP 500.00 instead of PHP 1,000.00 in exchange for sex. Thus, if at all, the Court is inclined to rule that appellant committed the crime out of anger for being deceived. For if appellant's original design was indeed to commit theft, he could have committed the same without violence while Alexander was sound asleep. But it was only after he killed Alexander that appellant took his belongings. In fine, stealing the items appears to have been a mere afterthought.

Appellant is guilty of the separate crimes of Homicide and Theft

Relevantly, the Court has held that if the original criminal design does not clearly comprehend robbery, but robbery follows the homicide as **an afterthought** or as a minor incident of the homicide, the criminal acts should be viewed as **constitutive of two offenses** and not of a single complex offense.[75]

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73 *People v. Casabuena*, G.R. No. 246580, June 23, 2020 [Per J. Lazaro-Javier, First Division].
74 *People v. Uy*, 664 Phil. 483, 498 (2011) [Per J. Peralta, Second Division].
75 *People v. Salazar*, 342 Phil. 745, 766 (1997) [Per J. Panganiban, Third Division].

In *People v. Algarme*,[76] the Court convicted the accused of separate crimes of homicide and theft since there was no showing that their original intention – determined by their acts, prior to, contemporaneous with and subsequent to the commission of the crime – was to commit robbery. Similarly, in *People v. Lamsing,*[77] the accused was convicted of separate crimes of homicide and theft since circumstances reveal that his principal purpose was to kill the guard and the taking of the gun was a mere afterthought.

So must it be.

Homicide is committed when: (a) a person was killed; (b) the accused killed him without any justifying circumstance; (c) the accused had the intention to kill, which is presumed; and (d) the killing was not attended by any of the qualifying circumstances of Murder, Parricide, or Infanticide.[78] All the elements of Homicide were duly established.

First, Alexander was killed;

Second, appellant killed him without any justifying circumstances;

Third, his intent to kill is conclusively presumed from Alexander's death; and

Fourth, the killing was not attended by any qualifying circumstances. Albeit the treachery, evident premeditation and abuse of superior strength were alleged, the prosecution failed to establish the same beyond reasonable doubt.

On the other hand, theft is committed when: (a) the taking of personal property; (b) the property belongs to another; (c) the taking away was done with intent to gain; (d) the taking away was done without the consent of the owner; and (e) the taking away is accomplished without violence or intimidation against person or force upon things.[79] All the elements are present in this case.

First, per his admission, appellant took Alexander's belongings, i.e., bracelet, ipod, cellphone, Sony cybershot T-7 digicam, and money.[80] Admittedly, the same were no longer recovered from him since he admitted

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76 598 Phil. 423, 450 (2009) [Per J. Brion, Second Division].
77 318 Phil. 561 (1995) [Per J. Mendoza, Second Division].
78 *Wacoy v. People,* 761 Phil. 570, 578 (2015) [Per J. Perlas-Bernabe, First Division].
79 *People v. Rodrigo,* 123 Phil. 310 (19660 [Per J. Makalintal].
80 *Rollo*, pp. 27–28.

having sold the stolen items.[81] At any rate, the same is irrelevant since recovery of the items from the accused is not an element of the crime.

Indeed, in *People v. De Jesus*,[82] the Court pronounced that when the fact of asportation has been established beyond reasonable doubt, conviction of the accused is justified even if the property subject of robbery is not presented in court. More, since appellant's prior possession of the digicam was duly established by the evidence on record, the disputable presumption that a person found in possession of a thing taken in the doing of a recent wrongful act is the taker and the doer of the whole act[83] applies.

Second, the stolen items belong to Alexander;

Third, the intent to gain is presumed from the unlawful taking by appellant;

Fourth, the same were taken after Alexander's death, hence, sans his consent; and

Fifth, the taking was without violence or intimidation against persons. For the violent acts of the appellant pertained to Alexander's killing and not to the unlawful taking of Alexander's belongings.

All told, appellant is guilty of the **separate crimes** of **homicide** and **theft.**

Penalty

Under Article 249 of the RPC, homicide shall be punishable by *reclusion perpetua*. In the absence of any mitigating or aggravating circumstances, the penalty shall be imposed in its medium period. Applying the Indeterminate Sentence Law, the maximum term shall be selected from the range of *reclusion temporal* in its medium period and the minimum term from the range of *prision mayor*. We, thus, impose eight (8) years and one (1) day of *prision mayor* as minimum to 14 years, eight (8) months and one (1) day of *reclusion temporal* in its medium period as maximum.

Further, appellant is liable to pay PHP 50,000.00 as civil indemnity, and PHP 50,000.00 as moral damages in accordance with prevailing jurisprudence.[84] More, considering that no documentary evidence of burial or

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81 TSN dated June 23, 2015, p. 14.
82 473 Phil. 405 (2004) [Per Curiam].
83 Section 3(j), Rule 130, Rules of Court, as amended.
84 *People v. Jugueta*, 783 Phil. 806, 832 (2016) [Per J. Peralta, En Banc].

funeral expenses was presented in court,[85] we award the sum of PHP 50,000.00 as temperate damages.[86]

We go now to the imposable penalty for theft.

As aptly opined by Associate Justice Mario V. Lopez during the deliberation, the prosecution's failure to prove the value of the stolen items is not necessarily fatal to the prosecution's case.[87] In *Merida v. People*[88] and *People v. Anabe*,[89] the Court held that in the absence of independent and reliable evidence as regards the estimated value of the stolen property, courts may either apply the minimum penalty under Article 309 of the RPC or fix the value of the property taken based on the attendant circumstances of the case.

Here, appellant previously attempted to sell the digicam for PHP 5,000.00.[90] Apart from this item though, he also admitted stealing Alexander's bracelet, photo ipod, cellphone, and money.[91] However since the crime was committed almost two decades ago and the stolen items had long been sold by appellant, it is difficult, if not improbable, to establish the correct respective value of each item. We deem it reasonable, therefore, to fix the aggregate value of all stolen items between PHP 5,000.00 but not exceeding PHP 20,000.00.

Article 309 of the RPC, as amended by Republic Act No. 10951, prescribes the penalty of *arresto mayor* in its medium period to *prision correccional* in its minimum period, if the value of the property stolen is over PHP 5,000.00 but does not exceed PHP 20,000.00. Albeit Republic Act No. 10951 took effect after the crime here was committed, it may apply retroactively for being favorable to the accused.[92] Since there are no mitigating or aggravating circumstances present, the penalty shall be imposed in its medium period, which is four (4) months and one (1) day to six (6) months of *arresto mayor*. The Indeterminate Sentence Law, however, is not applicable since the maximum term of imprisonment is less than one year.[93] In view of the attendant circumstances here, we thus impose a straight penalty of six (6) months of *arresto mayor*.

More, Article 2224 of the Civil Code sanctions the award of temperate damages in case of insufficiency of evidence of actual loss suffered. The amount of temperate damages is subject to the sound discretion of the court

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85 Records, p. 19.
86 *Supra* note 84 at 847.
87 *People v. Telen*, 398 Phil. 109 (2000) [Per J. De Leon, Jr., Second Division].
88 577 Phil. 243, 259 (2008) [Per J. Carpio, First Division].
89 644 Phil. 261, 286 (2010) [Per J. Carpio Morales, Third Division].
90 *Rollo*, p. 29.
91 *Id.* at 27–28.
92 Section 100, Republic Act No. 10951. *Retroactive Effect.* – This Act shall have retroactive effect to the extent that it is favorable to the accused or person serving sentence by final judgment.
93 The Indeterminate Sentence Law, Section 2.

but must be more than nominal but less than compensatory. Here, considering our estimation of the aggregate value of the stolen items above, we find the amount of PHP 20,000.00 as temperate damages proper.

Finally, all monetary awards shall earn 6% interest per annum from finality of the Decision until full payment in accordance with prevailing jurisprudence.

ACCORDINGLY, the Appeal is **DENIED**. The Decision dated January 26, 2021 of the Court of Appeals in CA-G.R. CR-HC No. 11631 is **AFFIRMED with MODIFICATION**.

Appellant Edgardo Catacutan *y* Mortera alias "Batibot," "Enzo," & "Gerry" is found **GUILTY** of **Homicide** defined and penalized under Article 249 of the Revised Penal Code. He is sentenced to the indeterminate penalty of **eight (8) years and one (1) day of *prision mayor***, as minimum **to fourteen (14) years, eight (8) months and one (1) day of *reclusion temporal***, as maximum and ordered to **PAY** the heirs of Alexander Tan Ngo the following amounts:

(1) **PHP 50,000.00** as civil indemnity;
(2) **PHP 50,000.00** as moral damages; and
(3) **PHP 50,000.00** as temperate damages.

He is also found **GUILTY** of **Theft** defined and penalized under Article 308 in relation to Article 309 of the Revised Penal Code, as amended by Republic Act No. 10951. He is sentenced to **six (6) months of *arresto mayor*** and ordered to **PAY** the heirs of Alexander Tan Ngo **PHP 20,000.00** as temperate damages.

All monetary awards shall earn 6% interest per annum from finality of this Decision until fully paid.

SO ORDERED.

AMY C. LAZARO-JAVIER
Associate Justice

WE CONCUR:

MARVIC MARIO VICTOR F. LEONEN
Senior Associate Justice
Chairperson, Second Division

MARIO V. LOPEZ
Associate Justice

JHOSEP Y. LOPEZ
Associate Justice

ANTONIO T. KHO, JR.
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.

MARVIC MARIO VICTOR F. LEONEN
Senior Associate Justice
Chairperson, Second Division

CERTIFICATION

Pursuant to Article VIII, Section 13, 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.

ALEXANDER G. GESMUNDO
Chief Justice