

## EN BANC

[ G.R. No. 129893, December 10, 1999 ]

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
ARNOLD DIZON Y BULURAN @ "APENG", ACCUSED-APPELLANT.**

### DECISION

#### PER CURIAM:

The supreme penalty of death was imposed upon accused-appellant Arnold Dizon y Buluran after the Regional Trial Court, Branch 32 of San Pablo City, Laguna, found him guilty beyond reasonable doubt of special complex crime of Robbery with Homicide aggravated by Rape, Dwelling and Nocturnity.<sup>[1]</sup> An Amended Information together with two other Informations were filed against accused-appellants, as follows:

Criminal Case No. 10400-SP (97).

"That on or about May 24, 1997, in the City of San Pablo, Republic of the Philippines and within the jurisdiction of this Honorable Court, the accused above-named, with intent to gain, did then and there wilfully, unlawfully and feloniously enter the house of one JOVITA MEDINA GESMUNDO located at Pook Pateña, Brgy. San Gabriel, this city, and once inside did then and there take, steal and carry away an undetermined amount of cash money belonging to said Jovita Medina Gesmundo, by means of violence against or intimidation of persons and by reasons or on the occasion of robbery, said accused stab several times the said JOVITA MEDINA GESMUNDO and her son ERWIN GESMUNDO with a bladed weapon with which the said accused was then conveniently provided, thereby inflicting wounds upon the person of said Jovita Medina Gesmundo and Erwin Gesmundo, which caused their immediate death."

Criminal Case No. 10406-SP (97).

"That on or about May 24, 1997, in the City of San Pablo, Republic of the Philippines and within the jurisdiction of this Honorable Court, the accused above-named, with intent to kill, did then and there wilfully, unlawfully and feloniously attack and stab one RUEL GESMUNDO with a bladed weapon with which the accused was then conveniently provided, thereby inflicting wounds upon said Ruel Gesmundo which ordinarily would have caused his death, the accused having thus performed all the acts of execution of homicide but nevertheless did not produce it by reason of some cause independent of the will of the accused, that is by the timely and prompt medical attendance given to said offended party."

Criminal Case No. 10407-SP (97).

"That on or about May 24, 1997, in the City of San Pablo, Republic of the Philippines, and within the jurisdiction of this Honorable Court, the accused above-named with lewd design and with force and intimidation, did then and there wilfully, unlawfully and feloniously have carnal knowledge of one GESALYN GESMUNDO by placing himself on top of and having sexual intercourse with the latter against her will and by reason and on the occasion thereof, the said victim died of wounds inflicted by the said accused with a bladed weapon with which he was then conveniently provided."

The above cases were jointly tried. Upon arraignment, accused-appellant pleaded "not guilty" to all charges.

The following facts were established:

In the early morning of May 24, 1997 at around 2:00 o'clock, Jovita Gesmundo and her children Gesalyn, 18, Erwin, 15, and Ruel, 12 were asleep in their house in Pook Pateña, Bgy. San Gabriel, San Pablo City, when Jovita, Ruel and Erwin were roused from their sleep by the persistent barking of their dog. Jovita looked out the window but saw nothing. She then went to the comfort room to relieve herself. Erwin and Ruel followed her to the comfort room to also relieve themselves.

When Jovita returned to the living room, she was surprised to see their neighbor, accused-appellant Dizon hanging from the ceiling, which was partially open because of the ongoing construction at their house.

Jovita got hold of a piece of wood and dared accused-appellant to come down. When accused-appellant jumped down from the ceiling, Jovita started hitting him with a piece of wood. Accused-appellant brandished a knife and stabbed Jovita in different parts of her body. Erwin, seeing her wounded mother fall to the ground, attacked accused-appellant with his fists, but he, too, was stabbed several times causing him to fall.

Ruel then got a piece of wood and hit accused-appellant at the back of his head. Meanwhile, Gesalyn was awakened by the commotion. She went out of her room and, seeing what was happening, jumped on the back of accused-appellant. She too, was stabbed several times by accused-appellant. Ruel ran inside his mother's room and hid under the bed.

Accused-appellant switched on the three lights of the house and started looking for things<sup>[2]</sup> in his mother's cabinet. From where he was hiding, Ruel saw accused-appellant stab Erwin some more. He also saw accused-appellant approach his sister who was lying on her back. After a while, Ruel heard his sister say, "*Tama na! Tama na!*", after which she fell silent. He looked and saw Gesalyn lying face down.

Accused-appellant entered the room where Ruel was hiding and coaxed him to come out of his hiding place. He pulled out Ruel's legs and successively stabbed the exposed parts of his body including his face, thighs, neck and legs. In the hope of stopping the attack, Ruel held his breath and played possum.

Believing that Ruel was already dead, accused-appellant went back to the living

room and mercilessly stabbed Jovita and Erwin who were already bathed in their own blood. Then, Ruel saw accused-appellant ransack their closets as if looking for something. Accused-appellant then went to the kitchen, opened the refrigerator, drank water, washed his hands and left.

After accused-appellant left their house, Ruel went out of his hiding place. At the living room, he saw his mother sprawled on her back and bathed in her own blood. Erwin was lying on his side also bathed in blood. His sister Gesalyn, who was wearing shorts before she went to bed and before she joined the affray at the living room, was lying face down with her panties already pulled down below her knees. Like Jovita and Erwin, Gesalyn was also lying in a pool of blood.

The wounded Ruel immediately went to the nearby house of his aunt Editha Gesmundo Martinez to ask for help. Editha informed her mother, Lourdes Gesmundo, what had happened. Lourdes Gesmundo brought Ruel to the San Pablo District Hospital on board a tricycle driven by Wilfredo Herradura. On their way to the hospital, Ruel informed his grandmother that it was accused-appellant "*Apeng*", their neighbor, who was responsible for the crimes.

After bringing Ruel to the hospital, Wilfredo Herradura went to the house of the victims. Accused-appellant, who was also there, approached him twice to ask him whether Ruel would survive from his wounds.

At the hospital, accused-appellant was also seen surreptitiously lurking in the corridors while Ruel was being treated.

Policemen went to the hospital to talk to Ruel, who survived the massacre. They were informed by Ruel that it was "*Apeng*" who committed the crimes, whereupon they immediately proceeded to the house of "*Apeng*", i.e., accused-appellant Arnold Dizon y Buluran. "*Apeng*" was brought by the police officers to the hospital, where he was positively identified by Ruel as the perpetrator of the crimes. Ruel would later reiterate his positive identification of accused-appellant during his testimony in open court.

All in all, Jovita suffered 4 stab wounds; Erwin, 17 stab and puncture wounds; Gesalyn, 25 stabs and puncture wounds as well as fresh lacerations in her genital organ; and Ruel, 32 stab and puncture wounds. Of the four, only 12-year-old Ruel survived to tell this harrowing tale. At the time of his death, Erwin was 15 years old and was working as a construction worker with a daily wage of P100.00. Gesalyn was 18 years old.

Remedios Peñaflor, a neighbor of the Gesmundos, testified that at dawn of May 24, 1997, she was awakened by shouts for help. She looked out in her window but saw nothing. After a while, she heard another shout. This time, when she peeped through her window, she saw accused-appellant running towards the direction of his house.<sup>[3]</sup>

Reigel Allan Zorra, a fingerprint expert, testified that upon examination, he found that the latent fingerprints lifted from the crime scene matched with the standard fingerprints of accused-appellant.<sup>[4]</sup>

Dr. Romeo T. Salen testified that the blood specimens extracted from two pieces of wood found at the scene of the crimes, and those from accused-appellant's long sleeve T-shirt and underwear which were sent to his office for testing, turned out to be positive for human blood belonging to blood group "O".<sup>[5]</sup>

Reynaldo Gesmundo, husband of Jovita, testified that he was working in Korea when his family was massacred. He returned home to Pook Pateña, Bgy. San Gabriel, San Pablo City on May 28, 1997 immediately after being informed of the incident. He further testified that when he went through the things left in the house, he noticed that a ring and watch, worth US\$200 and \$50 respectively, which he sent to his daughter Gesalyn two years ago, were missing.<sup>[6]</sup>

Accused-appellant, however, denied participation in the crime and interposed the defense of alibi. He alleged that from 3:00 o'clock up to 6:00 o'clock in the afternoon of May 23, 1997, he attended a drinking spree at the house of his friend, Eduardo de Luna, in Pook Pateña, Bgy. San Gabriel, San Pablo City together with Joselito Gesmundo and Rommel Gesmundo. They stopped drinking between 7:00 o'clock and 7:45 that evening, as they were in-charge of the *Palibot sa Kubol*, during which they gathered the children at the chapel and served them food. His group did not leave the chapel until around 9:00 o'clock in the evening, when they proceeded to the house of a certain Ronald Reyes. From 10:00 o'clock up to 12:00 midnight, they continued their drinking spree. He went home past midnight and slept. At around 2:00 o'clock in the morning of May 24, 1997, he was awakened by the shouts of Joselito "Tetet" Gesmundo who came over to ask his father for help. Despite the commotion, accused-appellant remained upstairs inside his room. It was only later that he saw Joselito "Tetet" Gesmundo hurriedly board a tricycle with a child in his arms. Thereafter, he went to the house of the Gesmundos and inquired from their neighbors what had transpired.

Reynante de Luna and Alejandro Cabrera corroborated the testimony of accused-appellant regarding their drinking spree from 6:00 o'clock in the evening up to 12:00 o'clock midnight of May 23, 1997. They denied having personal knowledge of the killing of Jovita, Erwin and Gesalyn.

Joselito Gesmundo, a brother-in-law of Jovita, testified that from 6:00 o'clock up to 7:30 o'clock in the evening of May 23, 1997, he was having a drinking spree together with accused-appellant. He went to bed at 7:30 in the evening. He was awakened at around 2:30 in the morning of May 24, 1997, right after the discovery of the incident.

Ruben Dizon, father of accused-appellant, testified that at around 5:00 o'clock in the morning of May 24, 1997, policemen went to their house and inquired as to the whereabouts of his son who was suspected of killing the Gesmundos. He accompanied his son to the hospital but he was not allowed to go inside the room where Ruel was being attended to by doctors. Ruel identified his son as the culprit. When accused-appellant went out of the room after about two minutes, he noticed contusions on his face, his t-shirt crumpled while his body looked "like a vegetable". Accused-appellant was immediately brought to the police headquarters. When he visited him there, he saw scratches on his face and traces of strangulation. His son could not remember who inflicted those injuries on him.

As stated above, accused-appellant Arnold Dizon was convicted of robbery with homicide aggravated by rape, dwelling and nocturnity, to wit:

"After carefully analyzing and evaluating all the evidences (*sic*) submitted by the parties and their oral arguments the Court is morally and legally convinced that the accused **ARNOLD DIZON Y BULURAN** committed the crime of Robbery with Homicide, with rape as one of the aggravating circumstances, and with the crime of Frustrated Homicide merged with the crime of Robbery with Homicide.

"**WHEREFORE**, in view of all the foregoing considerations the Court finds the accused guilty beyond reasonable doubt of the special complex crime of Robbery with Homicide with the aggravating circumstances of Rape, Dwelling and Nighttime. The crime of Frustrated Homicide is deemed merged with the crime of Robbery with Homicide.

"Accused ARNOLD DIZON Y BULURAN is hereby, therefore, sentenced to suffer the supreme and capital punishment of DEATH with all the accessory penalties imposed by law.

"The same accused is ordered to indemnify the heirs of the deceased Jovita Median Gesmundo, Gesalyn M. Gesmundo and Erwin M. Gesmundo, in the following sums:

- a. P150,000.00 as death indemnity for each of the deceased victims at P50,000 each;
- b. P1.5 million as moral and exemplary damages;
- c. P200,000.00 as funeral, burial and other miscellaneous expenses; and
- d. To pay the costs.

SO ORDERED. <sup>[7]</sup>

Per automatic appeal, accused-appellant asserts that:

I. THE COURT A QUO ERRED IN FINDING THAT ACCUSED-APPELLANT COMMITTED ROBBERY.

II. THE COURT A QUO ERRED IN APPRECIATING RAPE AS AN AGGRAVATING CIRCUMSTANCE DESPITE THE FAILURE OF THE PROSECUTION TO PROVE THE COMMISSION OF RAPE.

III. THE COURT A QUO ERRED IN APPRECIATING DWELLING AND NIGHTTIME AS AGGRAVATING CIRCUMSTANCES.

IV. THE COURT A QUO ERRED IN CONVICTING THE ACCUSED DESPITE THE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.

Indeed, the trial court erred in finding accused-appellant Dizon guilty of robbery. For a person to be guilty of robbery, it must be proved beyond a shadow of doubt that, with intent to gain, he took any personal property belonging to another by means of violence against or intimidation of any person, or by using force upon anything.