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[G.R. No. 140405, March 04, 2004]

PEOPLE OF THE PHILIPPINES, PLAINTIFF, VS. MAJOR EMILIO COMILING, GIL SALAGUBANG (ACQUITTED), MARIO CLOTARIO (ACQUITTED), GERALDO GALINGAN, EDDIE CALDERON (AT LARGE), BALOT CABOTAJE (AT LARGE) AND RICKY MENDOZA (AT LARGE), ACCUSED.

MAJOR EMILIO COMILING AND GERALDO GALINGAN, APPELLANTS.

D E C I S I O N

CORONA, J.:

This is an automatic review of the decision[1] dated September 1, 1999 of the Regional Trial Court, Branch 51, Tayug, Pangasinan, convicting Maj. Emilio Comiling, Geraldo Galingan alias "Bong" and Ricky Mendoza alias "Leo" of the crime of robbery with homicide and sentencing them to suffer the extreme penalty of death.

The three accused were charged under an information which alleged:

> The undersigned hereby accuses MAJOR EMILIO COMILING, GIL SALAGUBANG, BONG CLOTARIO, GERALDO GALINGAN, EDDIE CALDERON, BALOT CABOTAJE and RICKY MENDOZA @ Leo of the crime of ROBBERY WITH HOMICIDE and PHYSICAL INJURIES, committed as follows:
>
> > That on or about the 2nd day of September, 1995, in the evening, inside the Masterline Grocery located at Bonifacio Street corner Quezon Blvd., municipality of Tayug, province of Pangasinan, Philippines and within the jurisdiction of this Honorable Court, the above-named accused including certain JOE, REY and PAUL, whose family names have not yet been known, armed with firearms and handgrenade, aboard an owner-type stainless jeep and motorized tricycle, with intent to gain and with the use of violence against or intimidations upon persons, conspiring, confederating and helping one another, did then and there wilfully, unlawfully and feloniously enter the Masterline Grocery pretending to be customers and once inside, poked their guns and intimidated the owner of said grocery, MR. INCIONG CO, and his worker to open the drawers of the tables of said grocery and when opened, took and carried away EIGHTY ONE THOUSAND PESOS (P81,000.00) and three (3) pieces of Chinese gold necklace worth TWENTY SIX THOUSAND PESOS (P26,000.00), and

> afterwhich the above-named accused on their way out to escape with their loot, shot and hit a responding Tayug Policeman, PO3 ERWIL V. PASTOR, mortally wounding him on his face that subsequently led to his untimely death, and when said accused were cornered by other responding policemen, ran and passed to an adjacent store (Good Taste Bakery) and used it as their exit and while there also shot, hit and mortally wounded MRS. CONCHING CO, the owner of said bakery causing her injuries, the accused having thus performed the acts of execution which would have produced the crime of Homicide as a consequence, but nevertheless did not produce it by reason of causes independent of the will of the accused, and that is due to the timely and able medical assistance rendered to the said MRS. CONCHING CO, to her damage and prejudice and also to the heirs of PO3 ERWIL V. PASTOR.
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> CONTRARY to Article 294, par. 1 of the Revised Penal Code.[2]

Accused Eddie Calderon and Balot Cabotaje have remained at large to this day. The remaining accused (Comiling, Galingan, Mendoza, Salagubang and Clotario) pleaded not guilty during their arraignment. Trial on the merits ensued thereafter.

On March 28, 1997, Mendoza escaped from detention and was thus tried *in absentia*.

The records show that at sundown on September 2, 1995, Ysiong Chua, the owner of Masterline Grocery and his helper Mario were about to close the store when someone knocked on the door to buy some cigarettes. Masterline was located at the corner of Quezon Blvd. and Bonifacio St. in Tayug, Pangasinan.

As soon as Mario opened the door, three masked, armed men suddenly barged into the store and announced a hold-up. One of the robbers shoved Ysiong into the recesses of the grocery where he threatened to kill him if he did not give them his earnings. Ysiong retorted that he only had a small amount, which remark apparently irked the robber who then hit Ysiong's thumb with the butt of his gun. A simultaneous kick made the grocer fall down in pain.

As Ysiong lay prostrate on the floor, he saw the two other intruders, and a little later the robber who hit him, ransacking the drawers of his desk. Fortunately, he was able to quickly recover from the blows; whereupon he darted to the adjacent Good Taste Bakery and out to the Tayug Police Station farther west along Quezon Blvd. to report the incident.

SPO1 Rolando Torio, PO3 Erwil Pastor and SPO4 Emilio Nagui of the Tayug Police Station rushed to the crime scene where SPO1 Torio chanced upon Sonny Rimas, a barangay councilman, and his friend Jessie Batalla at the grocery entrance. He asked them if they knew what was going on inside the store but the two did not answer. While SPO1 Torio was standing outside the store's door, he heard three gunshots coming from inside the store, all directed towards Bonifacio Street. PO3 Pastor was then on the street while Nagui was some 50 meters away. PO3 Pastor ran and hid behind a concrete marker, then moved westward as if to return to the police headquarters. Unfortunately, in his attempt to flee, PO3 Pastor was shot in

the face. He was rushed to the Eastern Pangasinan District Hospital. On September 6, 1995, PO3 Pastor died from the injury he suffered.

Meanwhile, Ysiong discovered that he lost three gold necklaces worth P26,000 and cash amounting to P81,000.

On September 26, 1995, bothered by her conscience, prosecution witness Naty Panimbaan decided to reveal to police authorities what she knew about the case. During the trial, she testified that she was present in all the four meetings in which the plan to rob the Masterline Grocery was hatched.

The first meeting was on June 30, 1995 at the Zariza Inn in Tayug, Pangasinan. Among those present were Comiling, Galingan, Salagubang, Calderon, Clotario and Mendoza, along with two other persons known only as Paul and Rey. Another meeting was held by the group in July 1995 in the house of a certain Lani Galingan also in Tayug, Pangasinan. There were two other meetings in August 1995. Finally, on September 2, 1995, the group met at Lani's house where they received their final instructions and the firearms they were to use from Comiling and Galingan. The entire group headed for Masterline Grocery at around 4:00 p.m. except for Naty who stayed behind in Lani's house.

At around 8:00 p.m., she met the group in the house of a person named Joe. Galingan blamed a companion for shooting the policeman. The group planned to escape to Manila. She and Lani were given $50 by Galingan for their fare to Manila. Upon arrival there on September 3, 1995, they, together with Galingan, proceeded to Comiling's house in Parañaque. They discussed where she and Lani should stay as Comiling did not want them around. Comiling decided that the two of them should stay in Makati. It was while she was hiding in Makati that she was able to reflect on the events that transpired, gathering enough courage to confess the robbery to the police authorities.[3]

On the other hand, all the accused denied culpability for the felony. Each of them claimed to be somewhere else at the time the crime happened on September 2, 1995. The witnesses for the defense also tried to impugn the credibility of the lead witness for the prosecution, Naty Panimbaan.

On September 1, 1999, the trial court rendered its decision, the dispositive portion of which read:

> WHEREFORE, the prosecution having failed to establish their alleged guilt beyond moral certainty, a judgment of ACQUITTAL is hereby rendered in favor of the accused Gil Salagubang and Mario Clotario alias "Bong," and their respective bail bonds are hereby ordered released.
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> However, on the basis of the evidence the prosecution has adduced, which in the Court's perception satisfies the requisite proof beyond reasonable doubt as mandated by Section 2, Rule 133 of the Rules of Court, the Court hereby renders a judgment, as to the accused MAJ. EMILIO COMILING of Block 18, Lot 3, Camella Classic Phase II, Bicutan, Parañaque, Metro Manila, GERALDO GALINGAN alias "Bong" of Iris, Brgy. "B," Tayug, Pangasinan and RICKY MENDOZA, said to be a resident of Parañaque, Metro Manila, as per records of the BJMP district jail,

> Balugnao, Pangasinan, finding them GUILTY of the special complex crime of ROBBERY WITH HOMICIDE, defined and penalized under paragraph 1, Article 294 of the Revised Penal Code as amended, and pursuant to paragraph 1, Article 63, same Code, hereby sentences them to each suffer the penalty of DEATH, and in solidum to restitute, when possible, to private complainant Ysiong Chua his lost valuables, otherwise to make reparation therefor and pay to him their value of P26,000.00, plus the cash amount aggregating P81,000.00, and the heirs of PO3 Erwil Pastor, P50,000.00 for his death, and P100,000.00 for consequential damages as naturally must have arisen therefrom; and, to pay the costs.
>
> SO ORDERED.[4]

Appellants Comiling and Galingan filed separate appeal briefs.

Appellant Comiling, who was a major in the Philippine Army, assails his conviction by asserting that the killing of PO3 Erwil Pastor happened after the robbery took place, hence the "homicide" could not have been a necessary means of committing the robbery. Neither could it be said that the robbery produced another offense.

The argument is specious. As correctly stressed by the Solicitor General, robbery with homicide is a "special complex crime." It is enough that in order to sustain a conviction for this crime, the killing, which is designated as "homicide," has a direct relation to the robbery, regardless of whether the latter takes place before or after the killing. For as long as the killing occurs during or because of the heist, even if the killing is merely accidental, robbery with homicide is committed.

Comiling also questions the credibility of the prosecution witnesses, particularly Naty Panimbaan, who was supposedly a polluted source since she was one of the conspirators. The reasoning is out of line. This Court is not a trier of facts. All we have to discern from the records to believe the trial court's findings is a reasonable basis for its method of examining the credibility of witnesses and its assessment thereof. We do not second-guess the court a quo for as long as it does not gravely abuse such power.

In the case at bar, there is nothing to suggest that the trial court was whimsical or capricious in the performance of its tasks. Thus we have no recourse but to uphold its findings on the credibility of Naty Panimbaan and of the other prosecution witnesses. In any event, as correctly stated by the Solicitor General, Naty Panimbaan was examined three times not only under the close scrutiny of two defense counsels but also, in some instances, under the abrasive tirades of the trial judge who called her a "whore." Yet, despite the trial court's apparent misgivings about her character, it still gave full credence to her testimony:

> None of their dark attributes dissuades the Court from giving credence to their respective narratives, however. The Court agrees that Panimbaan knew too much, for her open-court testimony was abundantly detailed, generally consistent, straightforward and credible.
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> xxx xxx xxx
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> The Court believes Panimbaan's testimony that finally, at around 4:00

o'clock in the afternoon of September 2, 1995 the accused Comiling, Galingan, Calderon, Clotario and Mendoza, together with Rimas, Paul, Rey and Jose left Lani's place, while she stayed behind.

The Court believes Panimbaan's testimony that all throughout the four meetings conducted before September 2, the accused Comiling and Galingan presided, gave instructions and provided firearms and explosives.[5]

We find no compelling reason to disturb the factual findings and conclusions of the trial court. Indeed, prosecution witness Naty Panimbaan proved credible during the trial. She never wavered in her testimony on the details of the crime:

ATTY. CALPITO:

Q Since when was Geraldo Galingan your boyfriend, if you can still remember?
A Since September 1994, sir.

Q You mentioned a while ago that they are going to talk (sic) their plan to rob the Masterline Grocery, who are these people whom you refer as they?
A Maj. Comiling, Gil Salagubang, Eddie Calderon, certain Paul, Leo, Rey and Eddy, Bong Clotario and Sonny Rimas.

ATTY. CALPITO:

Q How about your boyfriend Geraldo Galingan? Would he or would he not participate?
A He was there, sir. He was one.

Q And so Madam Witness, when you were there at Zariza Village Inn, who were the persons whom you saw there, if any?
A We were inside the hotel. When we arrived I saw the group of Maj. Comiling.

Q You refer to a group of Maj. Comiling, will you be kind enough to enumerate their names?
A Maj. Emilio Comiling, Bong Galingan, Eddie Calderon, Gil Salagubang, Sonny Rimas, Bong Clotario, Rey and Paul.

Q Madam Witness, when you said that you saw this group when you arrived there, what did you do upon arrival there?

COURT:
When you said you whom you were (sic) referring to? He or a bigger number?

ATTY. CALPITO:
Q What did you do? Specifically you, sir.
A I sat beside them.