

## EN BANC

[ G.R. No. 132042, February 19, 2003 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
ARNOLD BACLA-AN LAPITAJE, MARIO REYES, WENDEL  
ARELLANO Y TANIO AND ROMY BALUYOS Y PINGKI-AN,  
ACCUSED-APPELLANTS.**

### D E C I S I O N

**AUSTRIA-MARTINEZ, J.:**

Before us for automatic review is a decision dated September 22, 1997, rendered by the Regional Trial Court of Danao City (Branch 25), the dispositive portion of which reads as follows:

*"WHEREFORE, the court finds accused Arnold B. Lapitaje, Mario Reyes, Wendel Arellano, and Romy Baluyos GUILTY beyond reasonable doubt of the special complex crime of Robbery with Homicide as charged and defined by the Revised Penal Code, and hereby sentences each to suffer the penalty of **reclusion perpetua to death**.*

*"Accused are hereby ordered to pay jointly and severally the sum of P1,210.00, the remaining unrecovered stolen money, unto private complainant Domingo Colonia.*

*"No other damages are proved in court.*

*"SO ORDERED."*<sup>[1]</sup> (Emphasis supplied)

On January 13, 1994, an Information was filed before the trial court against Arnold Bacla-an Lapitaje, Mario Reyes, Wendell Arellano y Tanio and Romy Baluyos y Pingki-an for Robbery with Frustrated Homicide<sup>[2]</sup> to which they all pleaded not guilty. Despite timely medical attention, victim Nelson Saavedra died by reason of which the Information was amended to Robbery with Homicide. The Amended Information reads as follows:

*"That on or about October 31, 1993 at around 7:30 o'clock in the evening, at Barangay Catmondaan, Municipality of Catmon, Province of Cebu, Philippines and within the jurisdiction of this Honorable Court, the said accused, conspiring and confederating together with others whose real names and present whereabouts are still unknown and helping one another did then and there willfully, unlawfully and feloniously, with intent of gain and by means of force, violence and intimidation, to wit: by entering the store of Domingo Colonia, and once inside held up the owner at gun point and thereafter take, steal and carry away cash money worth P2,000.00 belonging to the said Domingo Colonia against his will, to the damage and prejudice of said owner in the sum of P1,210.00 (as the*

*amount of P790.00 was recovered) and shot one NELSON SAAVEDRA in their escape, thereby inflicting wounds and despite timely medical intervention the said wounds caused his death at the Chong Hua Hospital in Cebu City on February 8, 1994 where he was medically treated for several months.*

"Contrary to law."<sup>[3]</sup>

All accused pleaded not guilty to the Amended Information. Trial ensued.

The prosecution presented oral, documentary and real evidence.

Offended party Domingo Colonia testified as follows: On October 31, 1993, at about 7:30 o'clock in the evening, three unmasked armed men barged inside his store. Two of the men pointed firearms at him, one at his forehead, the other at his nape. They introduced themselves as members of the New People's Army (NPA) asking for aid. He recognized accused Arnold Bacla-an Lapitaje who used to deliver edible oil to his store and was a customer in his tailoring shop. He saw Arnold go to the kitchen and point a firearm at his wife. The man who pointed a firearm at his nape opened the drawer of the table, took the coins amounting to P1,000.00, and took the contents of his wallet which amounted to around P1,000.00. When his wife shouted for help, neighbors came rushing to their aid, prompting the men to leave hastily. After the three men left, they heard gunfires. He learned that the fleeing robbers shot one of his neighbors, Nelson Saavedra, who was rushed by other bystanders to the nearest hospital. The following morning, a dead person was discovered at Sitio Bakhaw in Barangay Catmondaan, Municipality of Catmon, Cebu. Found in the dead man's belongings were assorted coins and bills amounting to P790.00 wrapped in a small towel, a .38 caliber firearm with two live ammunitions and an empty shell. He recognized the deceased as the person who poked a firearm at his forehead the night before. When asked to identify the persons apprehended and detained in jail in Catmon, he recognized accused Arnold Lapitaje.<sup>[4]</sup>

Rizalina Ares testified as follows: At around 7:30 o'clock in the evening of October 31, 1993, she met three persons coming from the store of Domingo Colonia. One was wearing a colored short sleeve polo, another was wearing a long sleeve fatigue shirt and the last one wore a green shirt. Shortly thereafter, she heard gunfires. She found a neighbor, Nelson Saavedra, who was wounded. She and a brother of the victim rushed the victim to the hospital. The next morning, she learned from Domingo that he was robbed. Later, Rizalina went to the municipal hall. She was able to identify accused Mario Reyes and Arnold Lapitaje, as the two men she met the night before through the t-shirts worn by them. Rizalina said that the person who was found dead the morning after the robbery was the one wearing a green shirt whom she also met that night while she was walking towards Domingo's store.<sup>[5]</sup>

Fred Ares testified: On the night in question, he heard a woman's voice coming from the highway. When he proceeded towards the highway, he met some of his neighbors who told him about the fleeing robbers. As he directed his gaze towards the direction pointed by his neighbors, he saw a parked taxi marked "Aaron". A speeding Hi-Ace van then arrived. Military men donning firearms alighted from the van and approached the taxi. The military men held the driver of the taxi, a man seated in the first seat and another man about to enter the taxi. The three men who

were held by the military were recognized by Fred in the courtroom as the accused Romy Baluyos, Wendel Arellano and Arnold Lapitaje.<sup>[6]</sup>

Cesar Roldan testified as follows: On the night of October 31, 1993, he was in the house of his uncle located 50 meters away from the place of Domingo when he heard explosions. He ran towards the road where he saw three persons with pistols, two of whom he identified in the courtroom as accused Mario Reyes and Arnold Lapitaje. The third man happened to be the person found dead the morning after the robbery. He recognized the three men that night because of the illumination coming from the fluorescent lamp along the road. Mario Reyes wore a fatigue shirt, Arnold Lapitaje donned an ordinary shirt the color of which Cesar could no longer recall and the third man was wearing a green shirt. Cesar was more than an arm's length from the three men with pistols who proceeded towards the direction of Sitio Bakhaw in Catmondaan coming from the house of Domingo Colonia. As Cesar made his way towards the place of Domingo, he saw Nelson Saavedra lying prostrate on the ground.<sup>[7]</sup>

SPO2 Calixto Nuñez testified that: he proceeded to the national highway on his motorcycle upon hearing cries for help from his neighbors, at a distance of around 10 meters, he saw a Hi-Ace van with Air Force men as passengers blocking a taxi marked "Aaron"; when he introduced himself as a person in authority, Mauro Oarga who identified himself as a colonel, turned over to him the persons of accused Romy Baluyos, Arnold Lapitaje and Wendel Arellano; Oarga and his men likewise turned over to him a .22 caliber revolver magnum, five live ammunitions, one empty shell and a hand grenade which was allegedly recovered under the front seat of the taxi much later; he recognized accused Arnold Lapitaje since the latter used to deliver edible oil in their place; he also recognized Wendel Arellano who used crutches, and, Romy Baluyos, as the driver of the taxi; with the help of some barangay tanods, he brought the three men to the police station for proper investigation; early in the morning of the following day, a dead person, recognized by Domingo Colonia as one of the robbers, was found dead; said person may have been killed by the civilian volunteers; in the meantime, the articles recovered by Oarga and his men were submitted to the National Bureau of Investigation (NBI), Central Visayas Regional Office at Cebu City for ballistic examination.<sup>[8]</sup>

A chemical analysis of the paraffin casts taken from the hands of accused Arnold Lapitaje and Mario Reyes yielded the following results:

- "1      *POSITIVE result for the presence of gunpowder residues on both hand casts taken from MARIO REYES.*
- "2      *NEGATIVE result for the presence of gunpowder residue on both handcasts taken from ARNOLD LAPITAJE.*"<sup>[9]</sup>

Bonifacio Ayag, a ballistic expert of the NBI, testified that he had conducted a ballistic examination on the specimens submitted to their office upon letter request of the PNP, Catmon, Cebu and that his findings, contained in his ballistic report, are as follows:

*"Comparative examinations made between the evidence empty shells marked 'AS', 'AS-1', 'AS-2' and the test shells fired from PALTIK "(COLT) REVOLVER caliber .38 without serial number, marked EF (X on the trigger*

*guard) and paltik (S&W) revolver caliber .22 magnum, SN\_11155 (X on the trigger guard) revealed the following results:*

- "a) Evidence empty shells marked 'AS-A1' and 'AS-2' and the test shells fired from PALTIK (COLT) REVOLVER CALIBER .38 without serial number, marked 'EF' (X on the trigger guard) gave POSITIVE results; said evidence shells were fired from this particular firearm.*
- "b) Evidence empty shells marked 'AS' and the test shells fired from PALTIK (S&W) REVOLVER CALIBER .22 MAGNUM, SN – 11155 (X on the trigger guard) gave positive results; said evidence shell was fired from this particular firearm".<sup>[10]</sup>*

Dr. Wayben Briones testified: He treated Nelson Saavedra who was admitted at the Chong Hua Hospital in Cebu City for multiple injuries on November 1, 1993. Nelson had a gunshot wound located at the right neck injuring the thyroid gland. The wound penetrated the scapular area and also injured the spinal cord which caused Nelson to be paralyzed from the neck to the lower part of his body. Nelson became bedridden in the hospital and developed bedsores but due to financial constraints, he went home on December 7, 1993. He returned to the hospital on January 27, 1994 but died on February 8, 1994 from multiple organ failures caused primarily by the gunshot wound on the neck.<sup>[11]</sup>

Lt. Col. Mauro Oarga, an officer of the Philippine Air Force, testified: On October 31, 1993, he and his companions had a beach activity at Catmondaan, Catmon, Cebu. On their way to Catmon, they saw "four" persons running towards a waiting taxi. Finding the actuations of the men to be suspicious, he instructed his driver to overtake the taxi and asked his men to disembark for the purpose of conducting a search on the taxi as well as on the "four" persons who had already boarded the taxi.<sup>[12]</sup> Accused driver Romy Baluyos and Wendel Arellano were among the persons on board the taxicab. Their body search on the "four" persons as well as on the driver of the taxi failed to yield anything but a search conducted on the taxi produced a .22 caliber revolver with five ammunitions and one empty shell found under the front seat of the taxi. A hand grenade was also discovered at the back portion of the vehicle. Although it was already dark at the time, the group was aided in their search by the headlights of the van which were switched on. Upon arrival of PNP operatives, he turned over the five persons as well as the articles recovered from the taxi.<sup>[13]</sup>

Sgt. Rogelio Castro testified that: while they were on their way home from Catmondaan their commanding officer, Lt. Col. Oarga ordered the driver of the vehicle to block a certain taxi; they disembarked from their vehicle upon instructions of Lt. Col. Oarga who told them to conduct a search on the taxi; they found the driver, who he could not recognize because it was dark, and, a person with an amputated leg seated in front of the taxi; during his search, Castro saw a .22 caliber firearm under the front seat of the taxi where the man with amputated leg was seated; he gave the firearm to Lt. Col Oarga who handed it over to SPO2 Nuñez, a member of the PNP of Catmon, who arrived at the scene.<sup>[14]</sup>

The accused refuted the evidence of the prosecution through the testimonies of their witnesses -

Arnold Lapitaje testified: He was a hired helper tasked to collect payments from customers of edible oil supplied by his employer. On October 31, 1993 at around 8:30 o'clock in the evening, he was at Catmondaan supposedly to collect payments from his regular customers, Domingo Colonia and a certain Fredo. He was not able to meet either of the two because Domingo's store was already closed at the time and Fredo was not around. Arnold thought of waiting for Fredo but since he was already hungry, he took his supper at the market place near the seashore. Suddenly, an explosion was heard coming from the highway causing the people to scamper away. Fearing for his safety, he went to one of the houses near the marketplace and continued eating his supper after which he proceeded to the highway to wait for a passenger vehicle bound for Cebu City. It was while waiting for a passenger vehicle that he learned from a group of women about some intruders who barged inside the house of Domingo Colonia and introduced themselves as members of the NPA. When he boarded an Isuzu elf vehicle, a member of the CAFGU (Civilian Armed Forced Geographical Unit) saw him and ordered him to alight from the vehicle. A policeman named Ceniza later arrived and brought him to the municipal hall where he was mauled so as to force him to reveal the identity of the persons involved in the robbery. He had nothing to reveal since he did not know the robbers. As a result of the mauling, he sustained injuries which caused him to have difficulties in standing up and walking. Inside the jail, he met accused Romy Baluyos and Wendel Arellano. Accused Mario Reyes was brought to the jail much later. The policemen told him (Arnold) that Mario identified him as one of the robbers but when confronted, Mario denied having implicated Arnold. The following day, the policemen brought him to Km. 47 where he was again asked to reveal the names of the persons who robbed the house of Domingo Colonia. When he denied any participation in the robbery, he was mauled and tied to an ipil-ipil tree by the policemen, some of whom he recognized as Calixto Nuneza, Bravio and Ares. Although bribed with P5,000.00 to reveal the names of the robbers, he insisted that he did not know the robbers. Much later, he and Mario were brought to the police headquarters at Gorordo Avenue, Cebu City for examination where the policemen poured warm water into their hands.<sup>[15]</sup>

Arnold further testified that Domingo might have implicated him as one of the robbers because of an incident wherein he accidentally spilled some of the edible oil that he was delivering in Domingo's store which caused some sacks of rice to get wet; that Domingo asked him to replace the spilled edible oil but he refused which angered Domingo.<sup>[16]</sup>

Accused Wendel Arellano testified: On October 31, 1993, at around 2:30 o'clock in the afternoon, after he had just bought a towel from the White Gold Store in Cebu City, he chanced upon his cousin Mario Albarena. After a brief conversation, he acceded to his cousin's invitation to go to Hagnaya so that the latter can catch a boat heading for Bantayan, Cebu. His cousin hired a taxi and upon reaching Hagnaya, the taxi driver was made to wait while they had some snacks. Afterwards, his cousin boarded the boat bound for Bantayan while he went back to the waiting taxi which was to take him back to Cebu City. The taxi left Hagnaya at around 5:45 o'clock in the afternoon. When they reached Catmondaan at around 7:30 in the evening, the taxi driver stopped the taxi near a lighted post to fill the overheated