

## SECOND DIVISION

[ G.R. No. 123545, October 18, 2000 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
RODELO PALIJON Y URHINA @ "MADELO," JIM MERCENE Y  
BUSAR @ "EMI," CARLITO DECENA Y PARDELA, AND MYRA PRIA  
Y BAGSIC, AND JOHN DOES, ACCUSED, RODELO PALIJON Y  
URHINA @ "MADELO" AND MYRA PRIA Y BAGSIC, ACCUSED-  
APPELLANTS.**

### DECISION

**QUISUMBING, J.:**

On appeal is the judgment of the Regional Trial Court of San Pablo City, Branch 32, in Criminal Case No. 8768-SP, promulgated on August 25, 1995, finding appellants guilty beyond reasonable doubt of Robbery with Homicide, and imposing on them the penalty of *reclusion perpetua*.

The facts of this case, culled from the records, are as follows:

At around two o'clock in the morning of August 27, 1993, Rodelo Palijon,<sup>[1]</sup> Carlos Decena,<sup>[2]</sup> and Jim Mercene entered the yard of the residence in San Pablo City of the spouses Gonzalo and Mellorequina Reyes. Both were elderly returnees (*balikbayans*), recently arrived from the United States.

Decena entered the house by climbing a post and removing some glass panes from the jalousy windows. Once inside, Decena and Mercene positioned themselves near the couple's bedroom door and waited for someone to open it so they could take cash and jewelry from the bedroom. Palijon remained outside the house, as look-out.

Around four o'clock A.M., Mrs. Reyes came out the bedroom to go to the bathroom. She did not notice the intruders. Decena then followed her to the toilet where he kicked and boxed her. Mrs. Reyes managed to shout for help before she fainted. Mr. Reyes rushed to assist his wife. Decena met him, with a steel-edged stool and struck him hard several times. Mr. Reyes fell prostrate on the floor. The robbers ransacked the house then escaped.

Prosecution witness Merly Reyes Alvero, a daughter of the Reyes couple, who lived some distance away, was roused from her sleep by a phone call from her cousin, Edith Bicomong. A hysterical Bicomong told Alvero that the latter's parents were hospitalized and in critical condition. Alvero dashed off to the hospital and was able to talk to her mother. Alvero then proceeded to the house of her parents. An inspection of the bedroom of the spouses Reyes revealed that cash amounting to P17,000.00 and various pieces of jewelry belonging to her mother, worth P100,000.00 were missing.

At 10:55 A.M., Mr. Gonzales died from his injuries. The immediate cause of death was "cardio-respiratory failure" caused by "severe contusion hematoma of head (right side, liver, and chest wall due to severe beatings, with suspicious multiple fractures, ribs, 5th and 7th, right.")[3]

In an Information dated October 14, 1993, the Office of the City Prosecutor of San Pablo City charged Rodelo Palijon, Jim Mercene, Carlos Decena, Myra Pria, and several John Does, with robbery and homicide, allegedly committed as follows:

"That on or about August 27, 1993, in the City of San Pablo, Republic of the Philippines and within the jurisdiction of this Honorable Court, the accused above-named, conspiring, confederating and mutually helping one another, with intent to gain, did then and there wilfully unlawfully and feloniously enter the house belonging to septuagenarian spouses GONZALO REYES and MELLOREQUINA BAGSIC REYES by means of forcibly detaching a glass window, and once inside said house, the said accused did then and there wilfully, unlawfully and feloniously take, steal and carry away P17,000.00 cash, one Sanyo Casette, one transformer-converter, and several pieces of jewelry belonging to said spouses, and on occasion of such robbery, the said accused did then and there wilfully, unlawfully and feloniously attack and assault the said spouses, thereby inflicting upon the latter physical injuries that subsequently caused the death of said Gonzalo Reyes.

"CONTRARY TO LAW."[4]

On November 9, 1993, the accused were arraigned before the RTC of San Pablo City, Branch 30,[5] and pleaded "Not Guilty" to the offense in the charge sheet. Both parties waived pre-trial. Trial on the merits then ensued.

On December 15, 1993, counsel for accused Decena and Mercene moved that the two be allowed to withdraw their earlier plea of "Not Guilty" and be re-arraigned to allow them to enter a plea of "Guilty" to the lesser offense of homicide. The prosecution raised no opposition and the motion was granted. Decena and Mercene were then re-indicted for homicide and, with assistance of counsel, pleaded "Guilty" to the charge. Both were then sentenced as follows:

"WHEREFORE, finding the accused guilty beyond reasonable doubt by their spontaneous plea of guilty to the lesser offense of Homicide, the Court hereby sentences each of them to suffer the penalty ranging from eight (8) years and one (1) day of *prision mayor* to fourteen (14) years and eight (8) months of *reclusion temporal*, to indemnify the heirs of the offended party the sum of P200,000.00 and to pay the costs.

"SO ORDERED."[6]

Trial then proceeded against the remaining co-accused Rodelo Palijon and Myra Pria. The prosecution's case was propelled in the main by the testimony of Mercene, who gave evidence against said co-accused. The trial court synthesized the testimony of Mercene as follows:

"...Jim Mercene points to the herein accused Palijon and Pria as co-conspirators in the commission of the crime, not to mention Decena who like him (Mercene) already pleaded guilty to the lesser offense of

Homicide. The accused Mercene and Decena participated in the commission and consummation of the offense with Myra Pria as having initiated the plan, knowing as she does that the victims are *balikbayans* and moneyed. The plan was completely hatched in the house of Palijon which is near the house of the victims. In the evening of August 26, [1993], the live-in partners Decena and Pria and the latter's child slept in the house of Palijon. At 2:00 o'clock in the morning of August 27, 1993, Decena, Palijon and Mercene executed the act, with Palijon climbing the concrete fence and Decena climbing a post to open a jalousy window. After Decena had opened the jalousy window Mercene was able to enter the house and he (Mercene) entered through the door with Decena opening the same. Palijon meanwhile stayed outside the house near the door. Pria stayed in the house of Palijon. He and Decena executed the acts with Decena hitting Mrs. Reyes causing her physical injuries, as well as Mr. Reyes, the latter having died due to the injuries sustained by him. Shouts were heard from outside saying "Ate, Ate, what happened (?)" which caused Mercene to run away going towards the direction of his cousin's house and proceeded to the BLTB Station. He did not return to the house of Palijon. Before the commission of the crime, Mercene knew already that Decena and Pria are live-in partners. Mercene had been Decena's co-inmate at the City Jail of Lucena (City). Later, Mercene saw Palijon in the CIS-Headquarters, Camp Nakar, Lucena City. They were not able to carry away the articles mentioned in the Information. It was Palijon who pointed to Mercene which led to the latter's investigation by the CIS-Investigator leading to his arrest and detention. The investigation on Mercene was not in writing. Mercene also saw Decena and Pria in the City Jail of San Pablo but was not able to talk to them.

"Mercene went to Brgy. Sta. Monica for three times with Decena and they went to the house of Pria on August 24, 1993. At that time Decena was staying in the house of Palijon and Decena could not stay in the house of Myra because the latter's parents were very angry with Decena. It was Myra who mentioned to Mercene that the victims are already in the Philippines from the United States and upon knowing this matter, the four of them, namely, Palijon, Decena, Pria and Mercene planned the robbery. Decena was arrested in Carmona, Cavite at the instance of Pria. From August 24 to 26, 1993, Mercene stayed in the house of Palijon, with Decena and Pria. Palijon was the one who pointed to Mercene and Decena."<sup>[7]</sup>

Palijon raised the defenses of denial and alibi. He said he was in Pila, Laguna from August 23-28, 1993, helping to construct an extension to the house of Arcadio Pangilinan, whom he presented as a witness. He claimed that he was tortured by the police investigators and interrogated without the assistance of counsel.

Pria also denied any involvement in the incident. She testified that on August 26, 1993, her father drove her out of their house for being the paramour of Decena, a married man. Decena and she then sought shelter in the house of Palijon where they stayed the night. On August 27, 1993, they were wakened by a commotion. Outside, she found that the Reyes couple had been robbed and assaulted in their home. Mrs. Reyes was a first-degree cousin of her mother, so she proceeded to the Reyes house. There, she found Edith Bicomong who asked her to get a tricycle so

the injured spouses could be brought to a hospital. Before she did, she saw her second cousin, Merly Reyes Alvero, arrive in her car. It was only in October 1993 that Decena told her of his involvement in the incident. She informed Mrs. Reyes and Alvero, who asked her to help in the arrest of Decena. On October 7, 1993, the police investigators brought her to Carmona, Cavite where Decena was arrested. The law enforcers brought her to the Philippine National Police-Criminal Investigation Service (PNP-CIS) headquarters in Lucena City where she was investigated and asked to sign a waiver, without the assistance of a counsel. She claims she was not given copies of the statements of witnesses for the prosecution named in the Information, nor was there a preliminary investigation conducted by the City Prosecutor. She avers that the only reason she was implicated, was because she was the live-in partner of Decena.<sup>[8]</sup>

Decena testified for Pria. He said Pria did not know about the plan to rob the Reyes couple. She was asleep when he robbed the Reyeses. He decided to rob the Reyeses because they disapproved of his live-in relationship with Pria and he hated the angry looks they gave him. He even said he had tried robbing the house twice before. He told her of the robbery and assault only after they transferred to Carmona, Cavite. He initially kept silent on Pria's non-participation since he was angry at her for causing his arrest.

The court *a quo* found the prosecution's evidence convincing and disposed as follows:

"WHEREFORE, in view of the foregoing considerations, the prosecution having proven the guilt of the accused Rodelo Palijon y Urhina and Myra Pria y Bagsic each of them is sentenced to suffer the penalty of:

"1. *Reclusion perpetua* for the death of Gonzalo Reyes;

"2, Four (4) years, two (2) months and one (1) day to six (6) years of *prision correccional* for the infliction of serious physical injuries to (sic) Mellorequina Reyes;

"3. To pay the heirs of said deceased the sum of P100,000.00 at P50,000.00 each of the said accused;

"4. For lack of evidence to prove the civil liability of both accused of the medical expenses of Mellorequina Reyes no award could be made;

"5. Both accused are entitled to the full credit of their preventive imprisonment; and

"6. To pay the costs. "SO ORDERED."<sup>[9]</sup>

On September 6, 1995, Palijon filed his notice of appeal to this Court, while Pria moved for reconsideration of the trial court's decision.

On October 11, 1995, the court denied Pria's motion for reconsideration.

On October 18, 1995, Pria filed her notice of appeal.

In his brief, Palijon assigns the sole error that:

THE TRIAL COURT ERRED IN CONVICTING ACCUSED-APPELLANT RODELO PALIJON OF THE CRIME CHARGED BEYOND REASONABLE DOUBT.

Appellant Pria assigned in her brief the following errors:

I

THE LOWER COURT ERRED IN HOLDING THAT MYRA PRIA IS A CO-CONSPIRATOR WITH THE OTHER ACCUSED JIM MERCENE, RODELO PALIJON AND CARLITO DECENA.

II

THE LOWER COURT ERRED IN HOLDING THAT ROBBERY HAS BEEN CONSUMMATED WHEN THERE WAS NO SHOWING OR PROOF ON THE PART OF THE PROSECUTION THAT ASPORTATION HAS BEEN ESTABLISHED BEYOND REASONABLE DOUBT.

III

THE LOWER COURT ERRED IN CONVICTING ACCUSED-APPELLANT MYRA PRIA WITH ROBBERY HOMICIDE WHEN ROBBERY ITSELF HAS BEEN PROVED AS CONCLUSIVELY AS ANY OTHER ESSENTIAL ELEMENT OF THE CRIME.

IV

THE LOWER COURT ERRED IN NOT HOLDING THAT THE EVIDENCE ON RECORD IS INSUFFICIENT TO WARRANT CONVICTION.

V

THE LOWER COURT ERRED IN NOT HOLDING THAT DEFENDANT APPELLANT WAS DENIED DUE PROCESS.

We find pertinent the following issues:

- (1) Was there a violation of due process in the case of appellant Myra Pria?
- (2) Did the trial court correctly convict appellants of the crime of robbery with homicide instead of the lesser offense of homicide?
- (3) Was the guilt of appellants established beyond reasonable doubt?

On the first issue, Pria claims her arrest was illegal;<sup>[10]</sup> that PNP-CIS operatives had no warrant of arrest when they took her; that there was no preliminary investigation conducted by the prosecutor; that she was not properly informed she was one of the accused in this case, thus her right to due process was violated.<sup>[11]</sup>

The Office of the Solicitor General (OSG), in turn, argues that appellant Pria had already waived the rights she invokes. The OSG points that Pria did not question the legality of her arrest immediately after detention; that she entered a plea on arraignment, thus waiving her rights to question any illegality in the conduct of her arrest.