

## THIRD DIVISION

[ G.R. No. 107799, April 15, 1998 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
PABLITO NANG ALIAS "BATUTTO," (AT LARGE) SUMINA GAMO  
AND LUMUNSO GABASAN ALIAS "DODONG," ACCUSED,  
SUMINA GAMO AND LUMUNSO GABASAN ALIAS "DODONG,"  
ACCUSED-APPELLANTS.**

### D E C I S I O N

**ROMERO, J.:**

Pablito Nang alias "Batutto" (Batuto) and accused-appellants Sumina<sup>[1]</sup> Gamo and Lumonsog<sup>[2]</sup> Gabasan alias "Dodong" were charged with the crime of robbery with homicide before the Regional Trial Court of Pagadian City, Branch 19. The information reads:

"That on the 16<sup>th</sup> day of May, 1990 at about 7:00 o'clock in the evening at Sitio San Pedro, Barangay Lubusan, Municipality of Lapuyan, Province of Zamboanga del Sur, Philippines, and within the jurisdiction of this Honorable Court, the abovenamed accused conspiring and confederating together and mutually helping one another, the two of said accused being armed with a pistol and a knife respectively, with intent to gain and by means of violence did then and there willfully, unlawfully and feloniously take and rob (sic) the spouses Mr. and Mrs. Nicanor Gonzales of the sum of Five Hundred (P500.00) Pesos and pursuant to said conspiracy and by reason and on the occasion thereof, the abovenamed accused did then and there willfully, unlawfully and feloniously stab and inflict injuries upon Nicanor Gonzales which caused the latter's death immediately thereafter.

Act contrary to Article (sic) 293 and 294 of the Revised Penal Code."<sup>[3]</sup>

Of the three accused, only herein accused-appellants Gamo and Gabasan, were apprehended, while Pablito Nang remains at large to this day. Upon arraignment, both accused-appellants entered a plea of "not guilty."

The prosecution's version of the crime, as testified to by the deceased victim's wife, Epifania Gonzales, and daughter, Elizabeth, is as follows:

At around 7:00 o'clock p.m. on May 16, 1990, farmer Nicanor Gonzales, his wife Epifania and six of their eleven children, namely: Monina, Celso, Elizabeth, Basilio, Ambrosio and Ronnie were in their house at Sitio San Pedro, Lubosan, Lapuyan, Zamboanga del Sur. Feeling the urge to relieve himself before going to bed, Nicanor proceeded downstairs to the comfort room adjacent to the house. Since it was already dark, Epifania placed a lighted gas lamp on the windowsill overlooking the toilet to illuminate the place.<sup>[4]</sup> After a while, Nicanor called for his daughter Elizabeth to take her turn in using the toilet. Forthwith, Elizabeth went downstairs and walked towards the direction of the toilet.<sup>[5]</sup>

To her surprise, she saw her father being attacked by three masked men. As Nicanor struggled with the assailants, their T-shirt masks dropped, enabling Elizabeth to recognize them with the aid of the light emanating from the gas lamp on the window overlooking the toilet and the scene of the crime. She recognized the two culprits who held her father's hands as accused-appellants Sumiba Gamo and Lumonsog Gabasan, and the third who stabbed her father, as accused Pablito Nang. Elizabeth positively identified the three assailants because she was familiar with their faces since they used to pass by their place.<sup>[6]</sup>

After stabbing Nicanor, the three malefactors rushed inside the house. Out of fear, Elizabeth followed them, only to be hit on the head by Gabasan who then stood as lookout beside the stairs.<sup>[7]</sup> Having subsequently eluded Gabasan, Elizabeth managed to reach the upper floor of the house where she saw her mother Epifania struggling against Pablito Nang and Sumiba Gamo.<sup>[8]</sup>

Earlier Epifania Gonzales, having heard the commotion coming from the direction of the comfort room, decided to investigate. Before she could even step out of the door, two masked men she met immediately grabbed her by the hands and poked knives at her. In the ensuing scuffle, she was able to pry loose their masks. Aided by the light coming from the gas lamp on the window, Epifania recognized the two who gripped her hands as Pablito Nang and Sumiba Gamo, both of whom were then armed with hunting knives. She also saw Lumonsog Gabasan standing by the stairs. The three intruders were familiar to her as Lumonsog Gabasan used to sell copra to them and buy on credit from her store. Nang was known as "*bugoy*," being notorious in their community.<sup>[9]</sup>

Gabasan demanded money from Epifania who replied that they had no money. She pleaded with them to spare her life. The two men warned her, instead, to keep quiet. But as Epifania continued to struggle with the two, she sustained wounds on her left wrist and neck. While Pablito Nang was restraining her, Sumiba Gamo searched their trunk, took the money in it, and told Nang about it.<sup>[10]</sup> As the three intruders fled, one of them shouted threateningly that they would come back. After the three had left, Epifania immediately shouted for help crying out, "*Tabang mo kay gitulis me!*" (Help us, we were robbed!)

There being no immediate response to her cries for assistance, Epifania, hurriedly scampered downstairs. As she left the house, she saw her husband Nicanor seriously wounded beside the mango tree. When she asked him to identify his assailants, he named Pablito Nang and Sumiba Gamo and could make no more utterance as he was choking in his own blood due to his grave condition.<sup>[11]</sup> When the neighbors arrived, they placed the wounded Nicanor on a bench which they carried towards the road to bring him to a doctor. Unfortunately, however, Nicanor expired after only a few minutes.<sup>[12]</sup>

When Epifania inspected the family trunk that was ransacked by the intruders, she found out that the money consisting of paper bills and coins totalling some ₱500.00 were taken by the three men.<sup>[13]</sup>

The following day, Patrolman Alfren Humpa and Pfc. Ansaling Lingating conducted an investigation and drew a sketch of the crime scene<sup>[14]</sup> which indicated the window of the Gonzales house overlooking the toilet, the one meter distance of the toilet from the

house, the four-meter distance of the toilet from the mango tree where bloodstains were found and the distance of the house from the road where the victim died.

The *post mortem* examination prepared by Rural Sanitation Inspector George Bayamban revealed that Nicanor Gonzales sustained the following injuries:

1. One stab wound at the middle of the chest measuring 1  $\frac{3}{4}$  inch in length and 1 inch wide and 4 inches deep;
2. One stab wound at the middle of his back measuring 1  $\frac{3}{4}$  inch in length and  $\frac{1}{2}$  inch wide and 4 inches deep.<sup>[15]</sup>

Hemorrhage due to stab wounds at middle back and chest was the cause of Nicanor's death.<sup>[16]</sup>

The defense had an altogether different version of the occurrence. Accused-appellants Sumiba Gamo and Lumonsog Gabasan interposed the defense of denial and alibi. In the morning of May 16, 1990, they were hired by Lamberto Lingating Lusay to make copra at Guili-an, Lapuyan, Zamboanga del Sur. They started making copra after breakfast at about 7:00 o'clock a.m. After they had finished their work at about 4:00 o'clock p.m., they decided to go to the house of Lumonsog Gabasan in order to rest. While there, Ernie Gandamon arrived and summoned Temie Gabasan, the brother of accused-appellant Lumonsog Gabasan, to discuss the impending marriage between Temie and Ernie's cousin Myrna. The father of Lumonsog Gabasan agreed to go to the house of Myrna in Sitio Guili-an, Poblacion, Lapuyan. He was accompanied by accused-appellants Lumonsog Gabasan and Sumiba Gamo, Dugang, Temie and Mamerto Masulog. The group brought two chickens to symbolize the plighted troth between Temie and Myrna.

Upon arrival at their destination, accused-appellants cooked and prepared the chickens for supper, after which a wedding covenant was forged between the father of the prospective groom and Mamerto Masulog, the guardian of the bride-to-be. While having dinner, they heard gunshots coming from the neighboring barangay, thereby prompting the father of accused-appellant Lumonsog and his younger brother to go home at once out of concern for the rest of the family. Accused-appellants Lumonsog Gabasan and Sumiba Gamo, together with Temie, stayed behind and slept at the house of Ernie that evening. Upon waking up at 7:00 o'clock a.m., they then returned to their place of work.<sup>[17]</sup> The defense presented Ernie Gandamon, Mamerto Masulog and Pendatun Bandatun to corroborate accused-appellants' alibi.<sup>[18]</sup>

On February 21, 1992, the trial court<sup>[19]</sup> rendered its judgment of conviction, disposing thus:

"WHEREFORE, the Court hereby finds "GUILTY" beyond reasonable doubt accused SUMINA GAMO and LUMONSOG GABASAN of the crime of Robbery with Homicide and sentences them to *RECLUSION PERPETUA* or LIFE IMPRISONMENT, with all the accessory penalties prescribed by law and to return the sum of FIVE HUNDRED (P500.00) PESOS to the heirs of victim Nicanor Gonzales which is the amount taken by them and to pay FIFTY THOUSAND (P50,000.00) PESOS as to compensation for the death of the victim Nicanor Gonzales to the latter's heirs without subsidiary imprisonment in case of insolvency. Both accused Sumina Gamo and Lumonsog Gabasan having been in prison since

June 5, 1990, are hereby credited FOUR-FIFTH (4/5) of such preventive imprisonment in the service of their sentence herein imposed.

SO ORDERED.”<sup>[20]</sup>

Hence, this appeal. Appellants insist on their innocence and contend that the trial court erred:

I x x x WHEN IT IGNORED MATERIAL INCONSISTENCIES IN THE TESTIMONIES OF THE WITNESSES FOR THE PROSECUTION AND MADE FINDINGS OF FACT THAT ARE UNSUPPORTED BY THE RECORDS AND THE EVIDENCE;

II x x x WHEN IT GAVE CREDENCE AND FULL WEIGHT TO THE TESTIMONY OF THE WIFE AND THE DAUGHTER OF THE DECEASED VICTIM NICANOR GONZALES;

III x x x WHEN IT HELD THAT THE ACCUSED APPELLANTS WERE GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF ROBBERY WITH HOMICIDE.”<sup>[21]</sup>

The appeal is devoid of merit.

Clearly, the core issue raised is factual and involves the credibility of the testimonies of witnesses. It is doctrinal that this Court will not interfere with the judgment of the trial court in passing upon the credibility of witnesses, unless there appears in the record some fact or circumstance of weight and influence which has been overlooked or the significance of which has been misapprehended or misinterpreted. The reason for this is that the trial court is in a better position to decide the question, having heard the witnesses and observed their deportment and manner of testifying during the trial.<sup>[22]</sup> There is no cogent reason for the Court to depart from this well-settled rule.

Accused-appellants point to certain errors committed by the trial court in its “findings of fact x x x that are not supported by the records x x x (and thus) x x x greatly prejudiced their constitutional right to a fair and impartial trial.” They, therefore, submit that this case comes within the exception to the rule that the findings of the trial court with regard to the credibility of the witnesses and the findings as to facts are not to be disturbed on appeal.<sup>[23]</sup> These supposed errors are: (1) that the daughter of the deceased victim, Elizabeth, was hit on the head with a gun by one of the three assailants,<sup>[24]</sup> but the records show that she only testified that she was hit on the head without mentioning a gun;<sup>[25]</sup> (2) that Pablito Nang was identified by Epifania because he removed his mask while ransacking the family trunk,<sup>[26]</sup> but witness Epifania said that she was able to remove the masks of the culprits while she was struggling with them; (3) that Epifania was grabbed by two masked men and a third masked person followed and entered the house and then ransacked the trunk,<sup>[27]</sup> but in the testimony of Epifania, only two persons entered their house and it was appellant Gamo who opened the trunk, while the third, appellant Gabasan, was waiting by the stairs;<sup>[28]</sup> (4) that the victim’s wife, Epifania, did not identify Lumonsog Gabasan while the victim’s daughter Elizabeth did not identify Sumina Gamo, because they did not know them, hence the two told the truth,<sup>[29]</sup> but in their respective testimonies, wife and daughter categorically identified all three accused as the ones who killed Nicanor, attacked them and robbed them of their money.<sup>[30]</sup> Accused-appellants, therefore, conclude that

because of these errors in its factual findings and appreciation of the evidence, the lower court failed in its duty to conduct a real examination as to the credibility of the testimony of the two key witnesses for the prosecution.

Upon careful examination of the assailed decision and the evidence on record, this Court agrees with accused-appellants' observation that the trial court may indeed have committed some errors, but these lapses are not so grave as to suffice to reverse the verdict of conviction against accused-appellants, who, as the records show, were categorically and positively identified by eyewitnesses as the perpetrators of the crime being imputed to them.

More important, all the elements of the crime of robbery with homicide are shown to exist. The crime of robbery with homicide is primarily classified as an offense against property and not against persons. It is therefore incumbent upon the prosecution to establish that: (a) the taking of personal property with the use of violence or intimidation against a person; (b) the property thus taken belongs to another; (c) the taking is characterized by intent to gain or *animus lucrandi* and (d) on the occasion of the robbery or by reason thereof, the crime of homicide, which is therein used in a generic sense, was committed.<sup>[31]</sup> This Court is satisfied that all the elements of the crime attributed to accused-appellants had been adequately established.

Accused-appellants attempt to discredit the testimonies of prosecution witnesses by pointing out certain alleged inconsistencies and contradictions between their affidavits or sworn statements given to the police investigators *vis-à-vis* their testimonies in open court. They allege that in Epifania's affidavit, nothing was mentioned about her being stabbed by her attackers. What she stated was that Sumiba Gamo pointed a knife at her while Pablito Nang ransacked the trunk. In court, however, she testified that Nang stabbed her and that Gamo was the one who opened the trunk, and that she recognized them as she was able to snatch their masks. As regards the affidavit of Elizabeth, accused-appellants point out that what was stated therein was that Lumonsog Gabasan whipped her with a pistol but she made no mention about the gun in her court testimony, only her allegation that she was whipped by Lumonsog Gabasan.

Contrary to what accused-appellants assert, there is no serious incongruence in the prosecution eyewitnesses' sworn declarations and their testimonies. What is material is that their testimonies agree on the essential fact that the three accused were present and they participated in the commission of the crime. It bears stressing that *ex parte* affidavits are generally incomplete. Hence, inconsistencies between the declaration of the affiants in their sworn statements and those in court do not necessarily discredit them. The infirmity of affidavits as evidence is a matter of judicial experience.<sup>[32]</sup>

In *People v. Miranda*,<sup>[33]</sup> this Court observed thus:

"x x x Predictably, testimonies given during trials are much more exact and elaborate than those stated in sworn statements. *Ex parte* affidavits are almost always incomplete and often inaccurate for varied reasons, at times because of partial and innocent suggestions or for want of specific inquiries. Witnesses cannot be expected everytime, except when told, to distinguish between what may be inconsequential and what may be mere insignificant details."

In the same vein, this Court noted in *People v. Reyes*,<sup>[34]</sup> viz.: