

## SECOND DIVISION

[ G.R. Nos. 137949-52, December 11, 2003 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. GEORGE "JORGE" BOLINGET Y BAGTAN (AT LARGE); ESTEBAN DOMACYONG Y PAKSAY; RICHARD PALEYAN OTHERWISE KNOWN AS ERICK LUMAS-E Y KIMONGO; REY BUYAGAN Y GENEYEN (ACQUITTED); FRANCIS KILONGAN (ACQUITTED); BONG PATAS (AT LARGE); THOMPSON "TAMSON" GADGADAN (AT LARGE); DANIEL LICDEMAN (AT LARGE); GERRY BALOYO (AT LARGE) AND SICDOD "FNU" (AT LARGE), ACCUSED.**

**ESTEBAN DOMACYONG Y PAKSAY; RICHARD PALEYAN A.K.A. ERICK LUMAS-E Y KIMONGO, ACCUSED-APPELLANTS.**

### DECISION

**PUNO, J.:**

This is an appeal from a consolidated decision rendered by Branch 4, Regional Trial Court of Baguio City in Criminal Case Nos. 11445-R, 11446-R and 11443-R.

Appellants Esteban Domacyong y Paksay ("Domacyong") and Richard Paleyan a.k.a. Erick Lumas-e y Kimongo ("Paleyan") along with seven (7) others were charged with the crime of robbery with homicide in Criminal Case No. 11443-R in an amended information which reads as follows:

The undersigned accuses GEORGE "JORGE" BOLINGET Y BAGTANG (*sic*), ESTEBAN DOMACYONG Y PAKSAY, RICHARD PALEYAN otherwise known as ERICK LUMAS-E Y KIMONGO, REY BUYAGAN Y GENEYEN, FRANCIS KILONGAN, BONG PATAS, THOMPSON "TAMSON" GADGADAN, DANIEL LICDEMAN, GERRY BALOYO and SICDOD "FNU" of the crime of ROBBERY WITH HOMICIDE, committed as follows:

That on or about the 28<sup>th</sup> day of May 1993, in the City of Baguio, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually aiding one another, with intent to gain and being then armed with guns, and by means of violence and intimidation, did then and there willfully, unlawfully and feloniously take, rob and carry away cash money amounting to about P140,000.00 more or less(,) from the Victoria Supermart, owned and managed by Tony Ang; that on the occasion and by reason of said robbery(,) and for the purpose of enabling them to take, steal, rob and carry away the said amount of money(,) the above-named accused did then and there willfully, unlawfully and feloniously and with intent to kill, engaged (*sic*) responding policemen and law enforcing agents in a shootout, resulting to the death of P/Insp. Nestor

Visitacion and Cesar Reyes as well as grave injuries to Peter Flores y Carbonell and Domingo Santiago.

#### CONTRARY TO LAW.

Domacyong and Paleyan were also separately charged with the crime of Violation of P.D. No. 1866 (Illegal Possession of Firearm and Ammunition), in a similarly-worded information in Criminal Case Nos. 11445-R and 11446-R for possession of (1) a .45 caliber pistol, with no serial number, with one bullet, (2) a .45 pistol with Serial No. 604262 and six (6) live ammunitions, and (3) a .38 caliber with five (5) live ammunitions, respectively.

The cases were consolidated. Nineteen witnesses were presented by the prosecution.

Witness Nelson Nialla ("Nialla"), the security guard on duty at Victoria's Supermart, narrated that on May 28, 1993, at about 11:00 in the morning, accused-appellants, along with several others, barged into the supermarket and announced a hold-up.<sup>[1]</sup> Accused Jorge Bolinget slipped behind cashier Gemma Gabuat, poked a gun at her right side, ordered her to open the cash register and scooped all the money.<sup>[2]</sup> His testimony was corroborated by Carina Sernadilla, the cashier manning the counter beside Gemma's.<sup>[3]</sup> Nialla also testified that the appellants, Paleyan and Domacyong, pointed their guns at him and ordered him to squat. Paleyan fired at the display and then took the money from the cash registers, while Domacyong entered the room of Tony Ang ("Ang"), the store owner. Nialla also noticed a man in civilian clothes outside the supermarket. He was peeping inside the supermarket and was in the act of drawing something from his front waistline. At about the same time that the malefactors exited the building, he heard a gunshot and saw the man in civilian clothes fall to the ground. He also saw a man being lifted to a taxi. Later, he learned that two persons, both CIS members, died as a result of the robbery. The two were Cesar Reyes and Nestor Visitacion.<sup>[4]</sup>

Albert Lorenzana testified that he was a bagger at Victoria's Supermart. During the incident, he was at the bodega to get some goods. Returning to the supermarket, he met the appellant Domacyong, carrying a black bag on his shoulder on his way to Ang's office.<sup>[5]</sup> He heard someone shout "hold-up." He turned his head towards the voice and saw accused Bolinget pointing a gun at cashier Gemma Gabuat.<sup>[6]</sup> Bolinget then took the money from the cash register.

Tony Ang, Victoria's Supermart owner, testified that he was inside his office attending to a customer when a man barged in, and at gunpoint, announced a hold-up. He was ordered not to look up and to hand over the money. The gunman placed the money inside a bag and rushed outside. The money totaled P140,000.00, more or less.<sup>[7]</sup>

Chief Inspector Avelino Edralin ("Inspector Edralin"), then the Assistant Chief of Police of Baguio, heard at their radio room one of their policemen asking for help as there was an on-going robbery at Session Road. Together with SPO1 Leonardo Gomez, he boarded their mobile car and drove to Session Road. Taking Calderon Street, they passed by SPO1 Hidalgo and told him to join them in the mobile. They saw appellant Domacyong running with a gun at Kisad Road. Inspector Edralin

shouted at the man to stop and raise his hands. He and SPO1 Juanito Kimay ("SPO1 Kimay") approached Domacyong, while Hidalgo and Gomez acted as back-ups. They arrested him, confiscated his gun and brought him to the police station. The gun was a .45 caliber pistol<sup>[8]</sup> without a magazine but with one live bullet inside the chamber.<sup>[9]</sup>

SPO1 Kimay testified that at the time of the incident, he was shopping with his wife at 456 Department Store along Session Road. Hearing gunshots, he went out of the store and met SPO1 Reynaldo Soria ("SPO1 Soria"). SPO1 Soria told him there was a robbery and the robbers were escaping towards Calderon Street on board a taxi. They exchanged fire with the robbers and tailed their taxicab towards Harrison Road. Due to heavy traffic near Land Bank, the robbers alighted from their taxicab and scurried in different directions towards Burnham Park. Kimay followed one of them up to Kisad Road near Cholo's Restaurant. While he was approaching the man, Inspector Edralin arrived together with Gomez and Hidalgo.<sup>[10]</sup> They arrested the man who turned out to be appellant Domacyong. They confiscated his firearm, a .45 caliber pistol.<sup>[11]</sup>

SPO1 Soria and SPO1 Federico Leyba testified that at the time of the robbery, they were routing traffic at the intersection of Harrison Road and Magsaysay Avenue. They received a radio message about a robbery at Victoria's Supermart. They drove their motorcycles to the supermarket. At the Mabini and Session Road intersection, they encountered the robbers who fired at them. They got off their motorcycles and gave chase to one of the suspects on foot. They caught up with the suspect and arrested him at the Burnham Lake Drive. The suspect is accused Bolinget.<sup>[12]</sup> They confiscated from him a .38 caliber revolver<sup>[13]</sup> and some money.<sup>[14]</sup>

SPO2 Rey Ekid, a member of the Baguio Police Station, narrated how he assisted in pursuing the robbers of Victoria's Supermart. He boarded their mobile car together with Sgt. Ruben Gomez and PO1 Eduardo Cocal and rushed to the place. Upon learning that the armed robbers fled towards Burnham Park, he and PO1 Copal alighted from their mobile and walked until they reached Cholo's Restaurant along Kisad Road. They saw four persons scaling the walls of the Athletic Bowl, and fired warning shots. The men did not stop and upon reaching the other side of the wall, scampered in different directions. One of them ran to the middle of the Athletic Bowl and Ekid was able to arrest him. He identified him as appellant Paleyan.<sup>[15]</sup> Appellant Paleyan surrendered a .45 cal. firearm<sup>[16]</sup> which he threw to the ground in the course of his arrest.

Inspector Oasan, then the Chief of the Investigation Section of the Baguio City Police Station, likewise testified about his role in the Victoria's Supermart robbery. Upon knowing of the incident, he summoned Sgt. Elmer Cruz and PO3 Romeo Agngaray and proceeded to the place on board Cruz' private car. Along the way, they were informed that the robbers fled to Burnham Park. Oasan alighted and went on foot towards Mabini Street while his companions proceeded by car towards Calderon Street. Upon reaching Burnham Lake Drive, he met several policemen, including SPO1 Leyba, who had arrested a person who was turned over to him. He identified the person as accused Bolinget.<sup>[17]</sup> SPO1 Leyba and SPO1 Soria also handed to him some money which they recovered from Bolinget. They executed a joint affidavit on the turn-over of the cash amount.<sup>[18]</sup> Oasan then returned the

money amounting to P16,460.50 to Ang, the owner of Victoria's Supermart.<sup>[19]</sup>

Inspector Oasan also testified that SPO1 Ekid turned over a firearm of .45 cal. to him along with a magazine containing five (5) ammunitions.<sup>[20]</sup> He likewise received a .38 cal. revolver from Mr. Rabang, the security officer of Burnham Park.<sup>[21]</sup>

Lilian Lauron, Records Officer III of the Records Legal & Research Branch, Firearms and Explosives Office of Camp Crame, and SPO3 Elpidio Agngarayngay, records verifier of the Records Branch of Camp Crame's Firearms and Explosives Office, also took the witness stand. They testified that the records on file at the Firearms and Explosives Office show that appellants Domacyong and Paleyan and accused Bolinget are not licensed or registered firearm holders.<sup>[22]</sup> A certification to that effect was likewise issued by Edwin C. Roque, Senior Inspector of the PNP and Chief, Records Br., FEO.<sup>[23]</sup>

A forensic chemist of the National Bureau of Investigation, Maria Carina Madrigal-Javier, testified that she conducted a chemistry examination on the paraffin cast done by their laboratory technician on the hands of appellants Domacyong and Paleyan and accused Bolinget. The results of her tests showed the presence of nitrates on the hands of accused Bolinget<sup>[24]</sup> and appellant Domacyong,<sup>[25]</sup> but none on the hands of appellant Paleyan.<sup>[26]</sup>

Dr. Jose Bugayong, Jr. conducted the medical examination of Cesar Reyes ("Reyes") at the St. Louis University Hospital. He testified that Reyes was still conscious but bleeding profusely from sustained gunshot wounds which affected his vital organs at the time he was brought to the hospital. He operated on the victim with the help of Senior Resident, Dr. Paul Etiket. Unfortunately, Reyes died after twenty hours due to massive and extensive bleeding.<sup>[27]</sup>

Dr. Tedler Depaynos examined Nestor Sabandal Visitacion at the St. Louis University Hospital. He testified that the gunshot wound sustained by Visitacion was fatal as it damaged his vital organs. He died after three days.<sup>[28]</sup>

The affidavits<sup>[29]</sup> executed by appellant Domacyong and accused Rey Buyagan were identified in court by NBI agent George Jularbal. He declared that before he took down their statements, he apprised them of their constitutional rights. They were assisted by PAO lawyer, Atty. Panfilo Salango.

The civil liabilities of the accused and the appellants were the subject of the testimonies of Domingo Santiago, the bystander who got hurt in the incident and Imelda Reyes, the widow of Cesar Reyes. Santiago narrated that he was in front of McDonald's when he got hit by a bullet fired from the gun of one of the robbers, whom he identified as appellant Domacyong. The bullet intended for the policeman ricocheted and hit him on his left leg. He was treated at the Baguio General Hospital for his injuries.<sup>[30]</sup> Imelda Reyes testified on the funeral expenses they incurred in the amount of P32,579.00.<sup>[31]</sup> She likewise declared that they spent P17,300.00 as hospitalization expenses. The expenses were not contested by the defense.

The accused waived presentation of evidence in their behalf and manifested that

they were submitting the case for decision. They were convicted by the trial court in a Judgment, the dispositive portion of which states:

WHEREFORE, judgment is rendered as follows:

CRIMINAL CASE NO. 11445-R

The court finds the accused Esteban Domacyong y Paksay guilty of illegal possession of a .45 caliber pistol; applying R.A. 8294 which amended PD 1866, sentences him to 7 years 4 months and 1 day of prision mayor to 8 years of prision mayor and to pay a fine of P30,000.00.

CRIMINAL CASE NO. 11446-R

The court finds the accused Erick Lumas-e y Kimongo (Richard Paleyan) guilty of illegal possession of 1 caliber .45 pistol with 6 live ammunition; applying R.A. 8294 which amended PD 1866, sentences him to 7 years 4 months and 1 day of prision mayor to 8 years of prision mayor and to pay a fine of P30,000.00.

CRIMINAL CASE NO. 11443-R

The court acquits Rey Buyagan y Geneyen and Francis Kilongan for insufficiency of evidence, but finds the accused George "Jorge" Bolinget y Bagtang, Esteban Domacyong y Paksay and Richard Paleyan (aka Erick Lumas-e) y Kimongo GUILTY beyond reasonable doubt of the crime of Robbery with Homicide as penalized in paragraph 1, Article 294 of the Revised Penal Code aggravated by use of unlicensed firearms (*sic*), hereby sentences George "Jorge" Bolinget, Esteban Domacyong and Richard Paleyan (aka Erick Lumas-e) to Reclusion Perpetua and to pay jointly and severally the:

Heirs of Cesar Reyes the amount of P50,000.00 by way of indemnification for his death; P72,599.00 for hospitalization and funeral expenses; P200,000.00 by way of moral damages;

Heirs of Nestor Visitacion the amount of P50,000.00 by way of indemnification for his death; P88,096.65 for actual expenses; P200,000.00 by way of moral damages;

Domingo Santiago the amount of P1,000.00 for actual expenses.

and to pay costs.

Let a warrant of arrest issue for George "Jorge" Bolinget, who had escaped from detention, for the service of his sentence as hereinbefore set forth.

Send the records of Criminal Case No. 11443-R to the Archives pending the apprehension of accused Bong Patas, Thompson Gadgadan, Daniel Licdeman, Gerry Baloyo, and Sicnud (FNU), for whom a warrant of arrest is ordered to issue.