

EN BANC

[G.R. Nos. 135051-52, December 14, 2000]

**PEOPLE OF THE PHILIPPINES, *PLAINTIFF-APPELLEE*, VS.
CLARITO ARIZOBAL (AT LARGE), ERLY LIGNES AND TWO (2)
JOHN DOES, *ACCUSED-APPELLANTS*.**

D E C I S I O N

PER CURIAM:

Man in his inordinate pursuit of lucre oft equates human life with mere chattels and plunges himself into the bottomless pit of his own folly. He is thus driven to plunder and kill, crimes which are most reprehensible and ignominious as the criminal apparently leans towards material gains than to the inestimable value of human life. Clarito Arizobal and Erly Lignes come to us to assert and prove, if they must, that they are not cast of that mold.

The factual backdrop: On 12 August 1994 two (2) separate Informations were filed before the Regional Trial Court of Cataingan, Masbate, charging Clarito Arizobal, Erly Lignes, Rogelio Gemino and two (2) John Does with Robbery in Band with Homicide for robbing and slaying Laurencio Gimenez^[1], Original Records.1 and his son Jimmy Gimenez.^[2]

After arraignment, the two (2) cases were tried jointly. However, on 14 May 1997, upon motion of accused Rogelio Gimeno, without objection from the prosecution, the two (2) Informations were dismissed as against him for lack of evidence. But the same cases remained as against accused Erly Lignes and Clarito Arizobal. Only accused Lignes appeared at the trial until its termination as Arizobal escaped from detention and had to be tried *in absentia*.^[3] The two (2) John Does were never apprehended as they were not sufficiently identified.

The prosecution presented, among others, Clementina Gimenez, wife of victim Laurencio Gimenez. She testified that on 24 March 1994 she together with her husband Laurencio Gimenez and a grandchild were sound asleep in their house in Tuybo, Cataingan, Masbate. At around 9:30 in the evening, Laurencio roused her from sleep and told her to open the door because there were persons outside the house. Since it was pitch-dark she lit a kerosene lamp and stood up to open the door. She was suddenly confronted by three (3) armed men pointing their guns at her. She recognized two (2) of them as Clarito Arizobal and Erly Lignes but failed to recognize the third person who was wearing a *maskara*. She readily identified Clarito because she used to pass by his house in San Rafael while Erly was also a familiar face as he was a regular habitue of the flea market.

According to Clementina, Clarito asked her husband, "*Tay*, where is your gun." But she promptly interjected, "We have no gun, not even a bolo. If you want, you can look around for it."^[4] While the man in *maskara* stood guard at the door, Clarito and

Lignes barged into the master's bedroom and forcibly opened the *aparador*. The terrified couple could not raise a finger in protest but had to leave their fate to the whims of their assailants. The intruders ransacked their cabinet and scattered everything on the floor until they found P8,000.00 among sheets of paper. Before leaving with their loot they ordered Laurencio to go with them to Jimmy's house because "we have something to talk about."^[5] Against his will, Laurencio went with them. Clementina recalled that shortly after the group left she heard a volley of shots. Her grandchild, as if sensing what befell her grandfather, could only mutter in fear, "*Lolo* is already dead!"

Erlinda Gimenez, wife of Jimmy Gimenez, narrated that on 24 March 1994, after she and her son had taken supper, her husband Jimmy with one Francisco Gimenez arrived. Jimmy informed Erlinda that they had already bought a carabao. After he handed her the certificate of large cattle, and while he was in the process of skinning a chicken for their supper, three (3) men suddenly appeared and ordered them to lie face down. One of them pushed her to the ground while the others tied Francisco and Jimmy as they whipped the latter with an armalite rifle. She noticed one of them wearing a mask, another a hat, and still another, a bonnet.^[6]

Realizing the utter helplessness of their victims, the robbers took the liberty of consuming the food and cigarettes Erlinda was selling in her *sari-sari* store. Finding no softdrinks to complete their snack, two (2) of the intruders ordered Erlinda to buy coke for them at the neighboring store. But they warned her not to make any noise, much less alert the vendor. When they returned to the house of Jimmy, the robbers proceeded to ransack the household in search for valuables. They took around P1,000.00 from her *sari-sari* store and told them to produce P100,000.00 in exchange for Jimmy's life. Since the couple could not produce such a big amount in so short a time, Erlinda offered to give their certificate of large cattle. The culprits however would not fall for the ruse and threw the document back to her. Three (3) masked men then dragged Jimmy outside the house and together with Laurencio brought them some fifty (50) meters away while leaving behind Clarito Arizobal and Erly Lignes to guard Francisco and Erlinda's son. Moments later she heard a burst of gunfire which reverberated through the stillness of the night.

When the masked men returned to Jimmy's house, one of them informed Erlinda that her husband and father-in-law had been killed for trying to escape. Upon hearing this, Erlinda, as if the heavens had fallen on her, slowly lost consciousness.

The post-mortem examination report prepared by Dr. Allen Ching showed that Jimmy Gimenez sustained injuries: (a) a gunshot wound located at the victim's zygomatic area (right side near the ear) which may have caused brain hemorrhage; (b) a non-serious gunshot wound at the upper back right side (armpit area); (c) a wound located at the middle side of the trunk - considered as exit of wound No. 2; (d) gunshot wound at the right forearm; and, (e) a wound considered as a complication of the trajectory point of wound No. 4 that caused the fracturing of a bone and exited as lacerated bone at the posterior.^[7]

The medico-legal examination conducted on Laurencio Gimenez also showed: (a) a chest wound penetrating the pericardium; (b) gunshot wound at the right thigh exiting at the lumbar area, back; (c) gunshot wound at the left thigh below the knee; and, (d) cause of death was respiratory arrest secondary to gunshot wounds.

[8]

Erly Lignes who testified in his defense explained that on 24 March 1994 at around 9:30 in the evening he was at the house of a neighbor, one Noli Hermosa, attending a house blessing in San Pedro, Cataingan, Masbate. He helped as cook and food server. The occasion was attended by around twenty (20) well-wishers who feasted on fried chicken and tuba. In fact, two (2) of his friends, Andres Lapay and Alberto Senelong, were among the group of drinkers. The celebration finally ended at 1:00 o'clock in the morning. Early that morning he went home, which was only about a hundred meters away.^[9]

Erly Lignes also presented Andres Lapay who confirmed his defense of alibi. Andres recounted that at 9:30 in the evening of 24 March 1994 he was at the house of Noli Hermosa for the latter's house blessing. There he saw Erly in the kitchen preparing food and drinks for the visitors. He also attended to Andres' group whenever they needed additional food and *tuba*. According to witness Andres, he was certain that from the time of his arrival at 7:00 o'clock in the evening to 11:00 o'clock Erly never went out of the house of Hermosa. When asked whether he knew where Tuybo was, Andres answered in the affirmative. He also clarified that it would take a person about one and a-half (1-½) hours by foot and about one hour (1) by horseback to travel from San Pedro to Tuybo.

On 30 March 1994 Erly Lignes was arrested in the house of Noli Hermosa and then detained at the Cataingan Municipal Jail. Erlinda Gimenez, accompanied by three (3) policemen, later went to the municipal jail and pointed to Clarito Arizobal as one of the suspects in the robbing and killing of Laurencio and Jimmy Gimenez. Erly insisted that he was not implicated by Erlinda as a suspect in the crime.

But the trial court gave full credence to the testimony of the prosecution witnesses and rejected the alibi of accused-appellant Erly Lignes. On 7 July 1998 the court found both accused Clarito Arizobal and Erly Lignes guilty of robbery with homicide, sentenced them to suffer the supreme penalty of Death and to indemnify the legal heirs of Laurencio Gimenez P50,000.00 for his death and P20,000.00 for moral damages, and the legal heirs of Jimmy Gimenez P50,000.00 also for his death and P20,000.00 for moral damages, plus P30,000.00 for exemplary damages.^[10] Their cases are now before us on automatic review in view of the penalty imposed.

As the lower court explained -

x x x x There is direct relation and intimate connection between the robbery and the killing. The accused were positively identified as perpetrators of the crime by witnesses Clementina Gimenez and Erlinda Gimenez who have no motive to falsely testify x x x x Inasmuch as no improper motive have (sic) been ascribed to prosecution witnesses and no shadow of evidence appears on record to blacken their credibility, their testimony is worthy of full faith and credit x x x x^[11]

Going to the denial and alibi interposed by accused Erly Lignes that he was at San Pedro, Cataingnan, Masbate, helping as cook and food server of his neighbor Noli Hermosa during a house blessing at the time of the

robbing and killing and his belief that he was not identified (Exh. "2") by witnesses (especially Erlinda Gimenez), and that he did not know Clarito Arizobal, the same cannot be given any credence in the face of the testimony of Clementina Gimenez and Erlinda Gimenez positively identifying him (Erly Lignes) and his co-accused Clarito Arizobal as the culprits x x x x The place of the crime is only about six kilometers and more or less one and a half hour travel by foot from the place where the accused Erly Lignes was at the time of the commission of the crime.

The robbery with killing was aggravated: 1) By a band because the malefactors were more than three armed robbers acting together; 2) With treachery because the robbers tied the hand of the victims before killing them; 3) By nighttime (nocturnity) because the accused took advantage of the night; and, 4) By dwelling because the robbery is (sic) committed with violence against or intimidation of persons x x x and the commission of the crime begun in the dwelling x x x x^[12]

Accused-appellant Erly Lignes attempted to discredit the testimonies of the prosecution witnesses by underscoring their alleged inconsistent, conflicting and incredible statements. He pointed out that: (a) Clementina testified on direct examination that she saw Erly Lignes in the flea market four (4) times, but on cross-examination she averred that she saw the accused at the flea market in only three (3) occasions; (b) she stated that three (3) persons entered their house and recognized Arizobal and Lignes because they lighted a kerosene lamp and that she did not recognize the third person because he was wearing a mask thus implying that Arizobal and Lignes were not wearing masks, in utter disregard of the risk of being identified; (c) she failed to witness the actual killing when she stated in her testimony that she came to know of it only the following morning after she was informed by a neighbor thus implying that accused-appellant Erly Lignes was not positively identified as the killer of the two (2) victims; and, (d) Erlinda Gimenez stated that three (3) robbers were not wearing masks while two (2) were wearing masks but later contradicted herself when she stated that three (3) of the masked robbers executed her husband and father-in-law.^[13]

In essence, the issues raised are factual and involve the credibility of the witnesses. It is doctrinally settled that in the absence of any showing that the trial court's calibration of factual issues, particularly on the matter of credibility, is flawed this Court is bound by its assessment. The rationale is the presumption 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.^[14] We find no plausible reason to deviate therefrom.

Admittedly, the prosecution witnesses did not give a consistent account of the whole gut-wrenching episode, particularly on the matter of the number of times Clementina allegedly saw the accused-appellant at the flea market; the exact number of masked robbers and other minor details. These lapses however are not so serious as to warrant the reversal of the verdict of conviction of accused-appellant and his co-accused who, as the record shows, were categorically identified as two (2) of the perpetrators of the crime.

Accused-appellant Erly Lignes asserts that the failure of Clementina Gimenez to actually witness the killing of her son and her husband is adequate proof that she failed to identify him as the killer. We do not agree. Accused-appellant seems to have overlooked the significance of conspiracy, as a rule for collective criminal liability, where it is not necessary to show that all the conspirators actually hit and killed the victim; what is important is that all participants performed specific acts with such closeness and coordination as unmistakably to indicate a common purpose or design in bringing about the death of the victim.^[15] The fact that accused-appellant conspired in the commission of the crime charged was sufficiently and convincingly shown by his active participation in ransacking the belongings of the two (2) Gimenez families, tying and holding Francisco and Erlinda's son immobile while the others led the two (2) hapless victims to the threshold of their obliteration.

Alibi, as it has been repeatedly held, is one of the weakest defenses as it is easy to concoct although difficult to prove. In the face of positive identification by credible prosecution witnesses, accused-appellant's defense of alibi must necessarily crumble. For alibi to be believed, credible and tangible proof of physical impossibility for the accused to be at the scene of the crime is indispensable.^[16]

The trial court is correct in appreciating dwelling as an aggravating circumstance. Generally, dwelling is considered inherent in the crimes which can only be committed in the abode of the victim, such as trespass to dwelling and robbery in an inhabited place. However, in robbery with homicide the authors thereof can commit the heinous crime without transgressing the sanctity of the victim's domicile.^[17] In the case at bar, the robbers demonstrated an impudent disregard of the inviolability of the victims' abode when they forced their way in, looted their houses, intimidated and coerced their inhabitants into submission, disabled Laurencio and Jimmy by tying their hands before dragging them out of the house to be killed.

But treachery was incorrectly considered by the trial court. The accused stand charged with, tried and convicted of robbery with homicide. This special complex crime is primarily classified in this jurisdiction as a crime against property, and not against persons, homicide being merely an incident of robbery with the latter being the main purpose and object of the criminals. As such, treachery cannot be validly appreciated as an aggravating circumstance under Art. 14 of *The Revised Penal Code*.^[18] This is completely a reversal of the previous jurisprudence on the matter decided in a litany of cases before *People v. Bariquit*.^[19]

While it appears that at least five (5) malefactors took part in the commission of the crime, the evidence on record does not disclose that "more than three" persons were armed, and robbery in "band" means "more than three armed malefactors united in the commission of robbery." Nowhere in the records can we gather that more than three (3) of the robbers were armed. Hence, "band" cannot be aggravating where no proof is adduced that at least four (4) of the five (5) perpetrators involved in this case were armed. In this regard, we are quoting pertinent portions of Clementina Gimenez's testimony -

- Q: While you were in your house do you still remember of any unusual incident that happened?
A: Yes, sir.