

EN BANC

[G.R. No. 127755, April 14, 1999]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
JOSELITO DEL ROSARIO Y PASCUAL, ACCUSED-APPELLANT.**

D E C I S I O N

BELLOSILLO, J.:

ON AUTOMATIC REVIEW is the decision of the court *a quo* finding accused Joselito del Rosario y Pascual guilty as co-principal in the crime of Robbery with Homicide and sentencing him to death and to pay the heirs of the victim Virginia Bernas P550,000.00 as actual damages and P100,000.00 as moral and exemplary damages.^[1]

Joselito del Rosario y Pascual, Ernesto Marquez alias "Jun," Virgilio Santos alias "Boy Santos" and John Doe alias "Dodong" were charged with special complex crime of Robbery with Homicide for having robbed Virginia Bernas, a 66-year old businesswoman, of P200,000.00 in cash and jewelry and on the occasion thereof shot and killed her.^[2]

While accused Joselito del Rosario pleaded not guilty,^[3] Virgilio "Boy" Santos and John Doe alias "Dodong" remained at large. Ernesto "Jun" Marquez was killed in a police encounter. Only Joselito del Rosario was tried.

These facts were established by the prosecution from the eyewitness account of tricycle driver Paul Vincent Alonzo: On 13 May 1996 between 6:00 and 6:30 in the evening, Alonzo stopped his tricycle by the side of Nita's Drugstore, General Luna St., Cabanatuan City, when three women flagged him. Parked at a distance of about one and a-half (1½) meters in front of him was a tricycle driven by accused Joselito del Rosario. At that point, Alonzo saw two (2) men and a woman grappling for possession of a bag. After taking hold of the bag one of the two men armed with a gun started chasing a man who was trying to help the woman, while the other snatcher kicked the woman sending her to the ground. Soon after, the armed man returned and while the woman was still on the ground he shot her on the head. The bag taken by the man was brought to the tricycle of accused del Rosario where someone inside received the bag. The armed man then sat behind the driver while his companion entered the sidecar. When the tricycle sped away Alonzo gave chase and was able to get the plate number of the tricycle. He also recognized the driver, after which he went to the nearest police headquarters and reported the incident.^[4]

Accused Joselito del Rosario gave his own version of the incident: At around 5:30 in the afternoon he was hired for P120.00^[5] by a certain "Boy" Santos,^[6] his co-accused. Their original agreement was that he would drive him to cockpit at the Blas Edward Coliseum.^[7] However, despite their earlier arrangement boy Santos directed

him to proceed to the market place to fetch "Jun" Marquez and "Dodong" Bisaya. He (del Rosario) acceded.^[8] Marquez and Bisaya boarded in front of the parking lot of *Merced Drugstore* at the public market.^[9] Subsequently, he was asked to proceed and stop at the corner of Burgos and General Luna Sts. where Bisaya alighted on the pretext of buying a cigarette. The latter then accosted the victim Virginia Bernas and grappled with her for the possession of her bag. Jun Marquez alighted from the tricycle to help "Dodong" Bisaya.^[10] Accused del Rosario tried to leave and seek help but "Boy Santos" who stayed inside the tricycle prevented him from leaving and threatened in fact to shoot him.

Meanwhile, "Dodong" Bisaya succeeded in taking the victim's bag, but before boarding the tricycle "Jun" Marquez mercilessly shot the victim on the head while she was lying prone on the ground. After the shooting, "Dodong" Bisaya boarded the sidecar of the tricycle while "Jun" Marquez rode behind del Rosario and ordered him to start the engine and drive towards Dicarma. While inside his tricycle, del Rosario overheard his passengers saying that they would throw the bag at Zulueta St. where there were cogon grasses.^[11] Upon arriving at Dicarma, the three (3) men alighted and warned del Rosario not to inform the police authorities about the incident otherwise he and his family would be harmed.^[12] Del Rosario then went home.^[13] Because of the threat, however, he did not report the matter to the owner of the tricycle nor to the barangay captain and the police.^[14]

As earlier stated, the court *a quo* found accused Joselito del Rosario guilty as charged and sentenced him to death. He now contends in this automatic review that the court *a quo* erred in: (1) Not finding the presence of threat and irresistible force employed upon him by his co-accused Virgilio "Boy" Santos, Ernesto "Jun" Marquez and "Dodong" Bisaya; (2) Not considering his defense that he was not part of the conspiracy among co-accused "Boy" Santos, "Jun" Marquez and "Dodong" Bisaya to commit the crime of Robbery with Homicide; (3) Not considering the violations on his constitutional rights as an accused; and, (4) Not considering that there was no lawful warrantless arrest within the meaning of Sec. 5, Rule 113, of the Rules of Court.^[15]

The conviction of del Rosario must be set aside. His claim for exemption from criminal liability under Art. 12, par. 5, Revised Penal Code as he acted under the compulsion of an irresistible force must be sustained. He was then unarmed and unable to protect himself when he was prevented at gunpoint by his co-accused from leaving the crime scene during the perpetration of the robbery and killing, and was only forced to help them escape after the commission of the crime.^[16]

But the trial court ruled that his fear was merely speculative, fanciful and remote, hence, could not be considered uncontrollable; and that a gun pointed at him did not constitute irresistible force because it fell short of the test required by law and jurisprudence.^[17]

We disagree. A person who acts under the compulsion of an irresistible force, like one who acts under the impulse of an uncontrollable fear of equal or greater injury, is exempt from criminal liability because he does not act with freedom. *Actus me invito factus non est meus actus*. An act done by me against my will is not my act. The force contemplated must be so formidable as to reduce the actor to a mere

instrument who acts not only without will but against his will. The duress, force, fear or intimidation must be present, imminent and impending, and of such nature as to induce a well-grounded apprehension of death or serious bodily harm if the act be done. A threat of future injury is not enough. The compulsion must be of such a character as to leave no opportunity for the accused for escape or self-defense in equal combat.^[18]

As a rule, it is natural for people to be seized by fear when threatened with weapons, even those less powerful than a gun, such as knives and clubs. People will normally, usually and probably do what an armed man asks them to do, nothing more, nothing less. In the instant case, del Rosario was threatened with a gun. He could not therefore be expected to flee nor risk his life to help a stranger. A person under the same circumstances would be more concerned with his personal welfare and security rather than the safety of a person whom he only saw for the first time that day.^[19]

Corollary with defense of del Rosario, we hold that the trial court erred when it said that it was "Boy" Santos who left the tricycle to chase the companion of the victim and then shot the victim on the head, instantly killing her.^[20] A careful and meticulous scrutiny of the transcripts and records of the case, particularly the testimonies of the witness Alonzo and del Rosario himself, reveals that it was "Jun" Marquez who ran after the victim's helper and fired at the victim. Witness Alonzo testified on direct examination -

Q: What was that unusual incident that transpired in that place at that time?

A: I saw two men and a lady grappling for the possession of a bag, sir x x x x

Q: What happened after the bag of the lady was grabbed by the two men?

A: One helper of the lady was chased *by the other man*, sir.

Q: Who was that man who chased the helper of the lady?

A: *He was the one holding the gun*, sir x x x x

Q: What happened when the bag of the woman was already taken by the two men who grappled the same from her?

A: *The man who chased the helper of the lady returned to the scene while the other man was then kicking the lady who in turn fell to the ground*, sir.

Q: What happened to the lady who to the ground?

A: *The man who chased the helper of the lady returned and then shot the woman who was then lying on the ground*, sir x x x x

Q: What about the bag, what happened to the bag?

A: *The bag was taken to a motorcycle, sir.*

Q: Will you please state before the Court what you noticed from the tricycle which was at a distance of about one and a half meter?

A: ***There was a passenger inside the tricycle, sir*** x x x x

Q: What happened to that woman that was shot by the man who grappled for the possession of the bag?

A: She was no longer moving and lying down, sir.

Q: After the shooting *by one of the two men* of the woman what else happened?

A: They went away, sir x x x x

Q: Will you please tell the Court in what portion of the tricycle did these men sit in the tricycle?

A: *The man who was holding the gun **sat himself behind the driver** while the other man **entered the sidecar**, sir.*^[21]

On the continuation of his direct examination, after an ocular inspection on the crime scene conducted by the trial court, witness Alonzo categorically stated -

Q: Will you please tell us where in particular did you see the accused who was then holding the gun fired at the victim?

A: *At the time **one man** was kicking the victim it was then his **other companion** holding the gun chased the helper of the deceased going towards Burgos Avenue, sir.*

Q: What happen (sic) afterwards?

A: The man with the gun returned and then while the victim was lying down in this spot the man holding the gun shot the victim, sir.^[22]

On cross-examination, the same witness further clarified -

Q: So, you saw the two other accused returned back to the tricycle?

A: Yes, sir.

Q: *And one of their companion was already inside the tricycle?*

x x x x

Court: ***There was somebody inside the tricycle where the handbag was given.***

x x x x

A: Yes, sir.

Q: ***And the one who sat at the back of the tricycle driver was the person with the gun?***

A: ***Yes, sir.*** [23]

On the other hand, accused Del Rosario declared during the direct examination that

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Q: x x x x On the evening of May 13, 1996 you were the driver of the tricycle as testified to by Eduardo Nalagon?

A: Yes, sir.

Q: Now, you also heard that there was a shoot out near the Cathedral and the Nita's Drugstore at Gen. Tinio St.?

A: Yes, sir.

x x x x

Court: At that time you were seated at the tricycle, which tricycle was used by the assailants?

A: Yes, sir.

Q: Then what did you do?

A: I tried to escape, sir, but I was stopped by them.

Q: When you said "they" to whom are you referring?

A: Boy Santos and Jun Marquez, sir.

Q: And at that time where was Boy Santos?

A: ***He was inside the tricycle, sir.***

Q: And what about Jun Marquez?

A: ***He alighted from the tricycle and helped him grabbed (sic) the bag of the victim.***

Q: And was the bag grabbed and by whom?

A: Yes, sir, by Dodong Visaya was able to grab the bag.

Q: And after that what happened?

A: Both of them rode inside my tricycle, sir.

Court: Did you not see any shooting?