

FIRST DIVISION

[G.R. No. 109767, September 03, 1996]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ROLANDO MONTEREY Y QUINDOZA, ACCUSED-APPELLANT.**

D E C I S I O N

KAPUNAN, J.:

Rolando Monterey y Quindoza appeals from the Decision^[1] dated August 25, 1992 of the Regional Trial Court of Marinduque, Branch 38 in Boac, finding him guilty beyond reasonable doubt in Criminal Case No. 23-92 of the crime of robbery and in Criminal Cases Nos. 24-92 and 25-92 of murder for the killing of Simeon Padolina and Reynaldo Penaverde.

On February 19, 1992, the Acting Chief of Police of Sta. Cruz, Marinduque filed two separate complaints for the two killings, against Abner Montero, Marion Mirasol and appellant. The complaint for robbery with force upon things against the same accused was filed subsequently.

In a resolution dated March 2, 1991, the municipal trial judge of Sta. Cruz who conducted the preliminary investigation in the three cases, recommended that Montero and Mirasol be discharged as accused in order to be state witnesses considering that they were the only witnesses who could testify on the circumstances surrounding the crimes. The same resolution recommended bail in the amount of P6,000 for the temporary liberty of appellant as far as the crime of robbery was concerned. No bail was recommended in the two murder cases.^[2]

On May 6, 1992, the provincial prosecutor denied dismissal of the cases against Montero and Mirasol. Consequently, on May 13, 1992, two informations for murder were filed against Montero, Mirasol and appellant.

The information in Criminal Case No.23-92 for the killing of Reynaldo Penaverde reads as follows:

That on or about the 15th day of February, 1992, at around 12:30 o'clock in the morning, in barangay San Antonio, municipality of Sta. Cruz, province of Marinduque, Philippines, and within the jurisdiction of this Honorable Court, the above-named defendants, conspiring, confederating, and mutually helping one another, did then and there, wilfully, unlawfully and feloniously, with deliberate intent to kill, suddenly, unexpectedly and with treachery/abuse of superior strength, assault, attack and slash the neck of one Reynaldo Penaverde y Arellano, with a bolo, inflicting upon the latter the following fatal injury, to wit:

- one hack wound at the neck exposing and ligating the following structures: trachea, esophagus, left and right carotid artery, left and right carotid vein, left and right jugular vein, left and right sternocleido-mastoid muscles.

thereby causing the direct and instantaneous death of said 16 year-old Reynaldo Penaverde y Arellano, to the damage and prejudice of his legal heirs represented by his father, Wilfredo Penaverde y Ricamara.

CONTRARY TO LAW, with the aggravating circumstance of disregard of the respect due the deceased on account of his comparatively tender age, and with the additional aggravating circumstance of recidivism against accused Rolando Monterey, he having been previously convicted by final judgment for murder, in Criminal Case No. 782, by the Regional Trial Court of Marinduque, as in fact he is still presently on parole.

The information in Criminal Case No. 25-92 is similarly worded except for the name of the victim, Simeon Padolina y Pastrana, his age, which is indicated therein as 12 years, and the name of the representative of his heirs, Narcisa Pastrana-Padolina.

In Criminal Case No. 24-92 for robbery, Montero was excluded as accused. The information reads:

That on or about the 14th day of February, 1992, at around 10:30 o'clock in the evening, in barangay San Antonio, municipality of Sta. Cruz, province of Marinduque, Philippines, and within the jurisdiction of this Honorable Court, the above-named defendants, conspiring, confederating and helping one another, did then and there, wilfully, unlawfully and feloniously, with intent of gain and by means of force and violence, enter the Marcopper Golf Club Canteen by forcibly destroying the padlock of the door of the storeroom and once inside, take, steal and carry away therefrom the following items, to wit:

1. Two (2) pcs. Golf balls
2. Fourteen (14) cases of beer
3. Five (5) bottles of Gilbeys gin
4. One (1) box (48) pcs. (sic) Century tuna
5. Assorted Imported Chocolate
6. Two (2) small Ginebra
7. Assorted Toiletries
8. Assorted Candies
9. Cigarettes (Marlboro, Phillip, Winston, Hope, etc.)
10. Assorted Canned Goods
11. Peanuts and
12. Knox

with a total value of Ten Thousand Two Hundred Eleven Pesos (P10,211.00) (sic), Philippine Currency, to the damage and prejudice of said Marcopper Gold Club Canteen.

CONTRARY TO LAW, with the aggravating circumstance of nocturnity (sic) which was purposely sought to insure the commission of the offense with impunity, and the additional aggravating circumstance of habituality (Art.

14 [10], RPC) with respect to accused Rolando Monterey, who has been previously convicted by final judgment in Criminal Case No. 7-82, for Murder.

The three cases were jointly tried. On arraignment, the three accused pleaded not guilty.

On July 6, 1992, after the prosecution had presented five witnesses,^[3] the provincial prosecutor filed a motion for the discharge of Montero as an accused in order that he could be a state witness. Duly opposed by the defense, the trial court nevertheless granted the motion and discharged Montero from Criminal Cases Nos. 23-92 and 25-92.

On August 25, 1992, the trial court rendered its decision, the dispositive part of which reads:

WHEREFORE, in view of the above observations and findings from the evidence adduced by both parties in this case, this court found:

1. Marion Mirasol y Molbog in Crim. Case No. 24-92 to be guilty beyond reasonable doubt of the crime of Robbery defined and punished under Art. 302(2) of the Revised Penal Code without any mitigating circumstance to offset the aggravating circumstance of nocturnity, granting him the benefit of Indeterminate Sentence Law, Marion Mirasol y Molbog is hereby sentenced to suffer an indeterminate prison term of FOUR (4) MONTHS and ONE (1) DAY of arresto mayor to FIVE (5) YEARS of prision correccional;

2. Rolando Monterey y Quindoza in Crim. Case No. 24-92 to be guilty beyond reasonable doubt of the crime of Robbery defined and punished under Art. 302(2) of the Revised Penal Code without any mitigating circumstance to offset the aggravating circumstances of nocturnity and recidivism, Rolando Monterey y Quindoza is hereby sentenced to suffer an indeterminate prison term of FOUR (4) YEARS, TWO (2) MONTHS and ONE (1) DAY to SIX (6) YEARS of prision correccional.

Both accused Marion Mirasol y Molbog and Rolando Monterey y Quindoza are hereby ordered to indemnify the Marcopper Golf Club the sum of P8,972.15 representing the value of the unrecovered items taken. They shall be credited with the full extent of their preventive imprisonment. Both accused are hereby committed to the custody of the Provincial Jail Warden.

In the Murder cases (Crim. Case No. 23-92 and 25-92)

Finding the evidence to be insufficient to support the conviction of Marion Mirasol y Molbog beyond reasonable doubt in Crim. Cases Nos. 23-92 and 25-92, both for Murder, he is hereby ACQUITTED of the offenses charged.

The Provincial Warden or any officer who is/are in custody of Marion Mirasol's body is/are hereby directed to release him immediately, unless to be held further for some other cause or causes (Crim. Case No. 24-

92).

Finding Rolando Monterey y Quindoza guilty beyond reasonable doubt of the crime of Murder in Crim. Case Nos. 23-92 and 25-92, defined and punished under Art. 248 of the Revised Penal Code, with the attendant aggravating circumstance of recidivism, following the doctrine laid down in *People v. Munoz*, 170 SCRA 109 (1989), relative to the imposable penalty, ROLANDO MONTEREY Y QUINDOZA is hereby sentenced to suffer in each case, Crim. Case No. 23-92 and Crim. Case No. 25-92, both for Murder, prison term of Reclusion Perpetua; ordering the accused to indemnify the heirs of Reynaldo Penaverde in Crim. Case No. 23-92 the sum of P50,000.00 as death indemnity and the further sum of P15,000.00 representing burial and vigil expenses; ordering the accused to indemnify the heirs of Simeon Padolina y Pastrana in Crim. Case No. 25-92 the sum of P50,000.00 representing death indemnity and the further sum of P23,000.00 representing burial and vigil expenses.

Accused Rolando Monterey shall be credited with the full extent of his preventive imprisonment.

Let the body of the accused Rolando Monterey y Quindoza be, as he is hereby, committed to the custody of the Provincial Jail Warden.

SO ORDERED.

Abner Montero, discharged as an accused to be a state witness, testified as follows:

He was informed by Mirasol of a drinking spree to be held at Sammy Monterero's place. At 5:00 p.m. of February 14, 1992, he proceeded to Monterero's house where he found Mirasol, Arnold Quindoza, Marcelo Ricohermoso, Patricio Daganon, appellant and Monterero. Daganon, an employee of Marcopper, invited them to continue their merry-making at Marcopper's Golf Canteen. Except for Monterero, the group accepted the invitation and proceeded to the canteen.

At the canteen, where a Valentine's party was being held at the second floor, Daganon ordered one-half case of San Miguel beer and one small bottle of Ginebra San Miguel for appellant. Later, Angel Ricarro and Roberto Penaverde joined the group. After a few minutes, Montero asked permission to leave but he was prevailed upon by Ricarro and Penaverde to stay saying that they would go home together as soon as they had finished drinking. Before they left, appellant told them that the drinking spree would resume at Green No. 3.

Ricarro, Penaverde and Montero had dinner at the Montero's house. Half an hour later, they proceeded to Green No. 3 where they found Quindoza alone. After a minute, Reynaldo Penaverde and Mirasol arrived, carrying two cases of beer. With them was appellant who had with him five bottles of Gilbey's gin and two bottles of San Miguel gin. The three placed the drinks on the grass and Mirasol started opening the beer bottles. When Montero noted that there was no *pulutan*, appellant instructed Mirasol and Reynaldo Penaverde to get the *pulutan* at the canteen, adding that it was already prepared. After drinking Gilbey's gin, appellant followed Mirasol and Reynaldo Penaverde to the canteen. When the three came back, Reynaldo was carrying five different opened canned goods which he placed on

the ground. They continued drinking and, later, Daganon and Ricohermoso arrived.
[4]

As it was getting late, Quindoza, Roberto Penaverde, Ricarro, Ricohermoso and Daganon left for home. While appellant, Reynaldo Penaverde, Mirasol and Montero continued drinking, 12-year-old Simeon Padolina happened to pass by. Reynaldo invited Simeon to join them and Simeon obliged. Simeon inquired why they had plenty of beer and *pulutan* and where these came from. Appellant said, "Ayaw kong mapapahiya sa ganitong bagay lang." While Mirasol kept quiet, Montero remarked, "Bakit ka magsasalita ng ganyan tayo-tayo lamang ang nakakaalam sa pagkawala sa Marcopper Golf Canteen." To this remark, appellant said, "Basta ayaw kong mapapahiya." [5]

Appellant then took aside Reynaldo Penaverde to some four meters away from the group where they talked for more than a minute. When they rejoined the group, appellant drank a bottle of beer, called Simeon Padolina and said, "Toy kakausapin lang kita sandali." Montero took one bottle of beer and, after he had consumed half of its content, he turned to where appellant and Simeon went. Montero saw Simeon Padolina leaning on a coconut tree with his head bowed and with blood oozing from his neck. Appellant was looking at Simeon beside him while holding a bloodied bolo. Mirasol then asked appellant, "Tol, bakit naman ganoon?" Appellant said, "Huwag kayong mag-aalala pinatulog ko lang iyan, dinasalan ko na iyan, sige diretso ang inom walang tatakbo."

Appellant went back to the group, sat down, took a bottle of Gilbey's gin and tucked it in his back (isinaksak sa likod). Then he went towards Reynaldo Penaverde and squeezed Reynaldo's neck with his left hand. While Reynaldo succeeded in freeing himself from appellant's hold, appellant hit him with the bottle of Gilbey's gin, sending Reynaldo to the ground. Reynaldo's head touched the ground with his buttocks protruding higher than his head (sumubsob na patuwad). At this moment, Montero stood up and turned his back. After summoning enough courage, Montero faced appellant and saw him already washing a bloodied bolo at the faucet. Reynaldo was bathed in his own blood with more blood gushing (sumisirit) from his neck.

Appellant slowly approached Montero and as appellant drew near him, appellant delivered a stabbing blow with his "29" knife. Mirasol ran towards Montero who also ran to the back of Mirasol intending to use the latter as a shield. Appellant opened a bottle of beer and sprinkled its contents on Mirasol and Montero's faces. Mirasol told Montero to run and as he did, Mirasol also ran in the opposite direction.
[6]

SPO3 Mario Penaverde of the Sta. Cruz police testified that he reported for work on February 15, 1992 earlier than usual because of a summon for help. He was with Station Commander Barretto, police investigator Ernesto Ravanera and Nolasco Regis when he went to the golf course where they found the bodies of Simeon Padolina and Reynaldo Penaverde about a hundred meters away from the canteen. At Green No. 3, they found scattered one case of beer, unopened and empty bottles of beer, broken bottles, packs of cigarettes and canned goods. Another case of beer with both unopened and empty bottles was found near appellant's house. To preserve fingerprints, Ravanera placed black powder and tape on the articles they picked up. The police gathered all these articles, placed them in two cases of beer