

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RODELO PALIJON Y URHINA @ “MADELO,” JIM MERCENE Y BUSAR @ “EMI,” CARLITO DECENA Y PARDELA, AND MYRA PRIA Y BAGSIC, AND JOHN DO...

G.R. No. 123545. October 18, 2000

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

On appeal is the judgment of the Regional Trial Court of San Pablo City, Branch 32, in Criminal Case No. 8768-SP, promulgated on August 25, 1995, finding appellants guilty beyond reasonable doubt of Robbery with Homicide, and imposing on them the penalty of reclusion perpetua.

The facts of this case, culled from the records, are as follows:

At around two o'clock in the morning of August 27, 1993, Rodelo Palijon,[1] Carlos Decena,[2] and Jim Mercene entered the yard of the residence in San Pablo City of the spouses Gonzalo and Mellorequina Reyes. Both were elderly returnees (balikbayans), recently arrived from the United States.

Decena entered the house by climbing a post and removing some glass panes from the jalousy windows. Once inside, Decena and Mercene positioned themselves near the couple's bedroom door and waited for someone to open it so they could take cash and jewelry from the bedroom. Palijon remained outside the house, as look-out.

Around four o'clock A.M., Mrs. Reyes came out the bedroom to go to the bathroom. She did not notice the intruders. Decena then followed her to the toilet where he kicked and boxed her. Mrs. Reyes managed to shout for help before she fainted. Mr. Reyes rushed to assist his wife. Decena met him, with a steel-edged stool and struck him hard several times. Mr. Reyes fell prostrate on the floor. The robbers ransacked the house then escaped.

Prosecution witness Merly Reyes Alvero, a daughter of the Reyes couple, who lived some distance away, was roused from her sleep by a phone call from her cousin, Edith Bicomong. A hysterical Bicomong told Alvero that the latter's parents were hospitalized and in critical condition. Alvero dashed off to the hospital and was able to talk to her mother. Alvero then proceeded to the house of her parents. An inspection of the bedroom of the spouses Reyes revealed that cash amounting to P17,000.00 and various pieces of jewelry belonging to her mother, worth P100,000.00 were missing.

At 10:55 A.M., Mr. Gonzales died from his injuries. The immediate cause of death was "cardio-respiratory failure" caused by "severe contusion hematoma of head (right side, liver, and chest wall due to severe beatings, with suspicious multiple fractures, ribs, 5th and 7th, right.")[3]

In an Information dated October 14, 1993, the Office of the City Prosecutor of San Pablo City charged Rodelo Palijon, Jim Mercene, Carlos Decena, Myra Pria, and several John Does, with robbery and homicide, allegedly committed as follows:

"That on or about August 27, 1993, in the City of San Pablo, Republic of the Philippines and within the jurisdiction of this Honorable Court, the accused above-named, conspiring, confederating and mutually helping one another, with intent to gain, did then and there wilfully unlawfully and feloniously enter the house belonging to septuagenarian spouses GONZALO REYES and MELLOREQUINA BAGSIC REYES by means of forcibly detaching a glass window, and once inside said house, the said accused did then and there wilfully, unlawfully and feloniously take, steal and carry away P17,000.00 cash, one Sanyo Cassette, one transformer-converter, and several pieces of jewelry belonging to said spouses, and on occasion of such robbery, the said accused did then and there wilfully, unlawfully and feloniously attack and assault the said spouses, thereby inflicting upon the latter physical injuries that subsequently caused the death of said Gonzalo Reyes.

"CONTRARY TO LAW."[4]

On November 9, 1993, the accused were arraigned before the RTC of San Pablo City, Branch 30,[5] and pleaded "Not Guilty" to the offense in the charge sheet. Both parties waived pre-trial. Trial on the merits then ensued.

On December 15, 1993, counsel for accused Decena and Mercene moved that the two be allowed to withdraw their earlier plea of "Not Guilty" and be re-arraigned to allow them to enter a plea of "Guilty" to the lesser offense of homicide. The prosecution raised no opposition and the motion was granted. Decena and Mercene were then re-indicted for homicide and, with assistance of counsel, pleaded "Guilty" to the charge. Both were then sentenced as follows:

"WHEREFORE, finding the accused guilty beyond reasonable doubt by their spontaneous plea of guilty to the lesser offense of Homicide, the Court hereby sentences each of them to suffer the penalty ranging from eight (8) years and one (1) day of prision mayor to fourteen (14) years and eight (8) months of reclusion temporal, to indemnify the heirs of the offended party the sum of P200,000.00 and to pay the costs.

"SO ORDERED."[6]

Trial then proceeded against the remaining co-accused Rodelo Palijon and Myra Pria. The prosecution's case was propelled in the main by the testimony of Mercene, who gave evidence against said co-accused. The trial court synthesized the testimony of Mercene as follows:

"...Jim Mercene points to the herein accused Palijon and Pria as co-conspirators in the commission of the crime, not to mention Decena who like him (Mercene) already pleaded guilty to the lesser offense of Homicide. The accused Mercene and Decena participated in the commission and consummation of the offense with Myra Pria as having initiated the plan, knowing as she does that the victims are balikbayans and moneyed. The plan was completely hatched in the house of Palijon which is near the house of the victims. In the evening of August 26, [1993], the live-in partners Decena and Pria and the latter's child slept in the house of Palijon. At 2:00 o'clock in the morning of August 27, 1993, Decena, Palijon and Mercene executed the act, with Palijon climbing the concrete fence and Decena climbing a post to open a jalousy window. After Decena had opened the jalousy window Mercene was able to enter the house and he (Mercene) entered through the door with Decena opening the same. Palijon meanwhile stayed outside the house near the door. Pria stayed in the house of Palijon. He and Decena executed the acts with Decena hitting Mrs. Reyes causing her physical injuries, as well as Mr. Reyes, the latter having died due to the injuries sustained by him. Shouts were heard from outside saying "Ate, Ate, what happened (?)" which caused Mercene to run away going towards the direction of his cousin's house and proceeded to the BLTB Station. He did not return to the house of Palijon. Before the commission of the crime, Mercene knew already that Decena and Pria are live-in partners. Mercene had been Decena's co-inmate at the City Jail of Lucena (City). Later, Mercene saw Palijon in the CIS-Headquarters, Camp Nakar, Lucena City. They were not able to carry away the articles mentioned in the Information. It was Palijon who pointed to Mercene which led to the latter's investigation by the CIS-Investigator leading to his arrest and detention. The investigation on Mercene was not in writing. Mercene also saw Decena and Pria in

the City Jail of San Pablo but was not able to talk to them.

"Mercene went to Brgy. Sta. Monica for three times with Decena and they went to the house of Pria on August 24, 1993. At that time Decena was staying in the house of Palijon and Decena could not stay in the house of Myra because the latter's parents were very angry with Decena. It was Myra who mentioned to Mercene that the victims are already in the Philippines from the United States and upon knowing this matter, the four of them, namely, Palijon, Decena, Pria and Mercene planned the robbery. Decena was arrested in Carmona, Cavite at the instance of Pria. From August 24 to 26, 1993, Mercene stayed in the house of Palijon, with Decena and Pria. Palijon was the one who pointed to Mercene and Decena."[7]

Palijon raised the defenses of denial and alibi. He said he was in Pila, Laguna from August 23-28, 1993, helping to construct an extension to the house of Arcadio Pangilinan, whom he presented as a witness. He claimed that he was tortured by the police investigators and interrogated without the assistance of counsel.

Pria also denied any involvement in the incident. She testified that on August 26, 1993, her father drove her out of their house for being the paramour of Decena, a married man. Decena and she then sought shelter in the house of Palijon where they stayed the night. On August 27, 1993, they were awakened by a commotion. Outside, she found that the Reyes couple had been robbed and assaulted in their home. Mrs. Reyes was a first-degree cousin of her mother, so she proceeded to the Reyes house. There, she found Edith Bicomong who asked her to get a tricycle so the injured spouses could be brought to a hospital. Before she did, she saw her second cousin, Merly Reyes Alvero, arrive in her car. It was only in October 1993 that Decena told her of his involvement in the incident. She informed Mrs. Reyes and Alvero, who asked her to help in the arrest of Decena. On October 7, 1993, the police investigators brought her to Carmona, Cavite where Decena was arrested. The law enforcers brought her to the Philippine National Police-Criminal Investigation Service (PNP-CIS) headquarters in Lucena City where she was investigated and asked to sign a waiver, without the assistance of a counsel. She claims she was not given copies of the statements of witnesses for the prosecution named in the Information, nor was there a preliminary investigation conducted by the City Prosecutor. She avers that the only reason she was implicated, was because she was the live-in partner of Decena.[8]

Decena testified for Pria. He said Pria did not know about the plan to rob the Reyes couple. She was asleep when he robbed the Reyeses. He decided to rob the Reyeses because they disapproved of his live-in relationship with Pria and he hated the angry looks they gave him. He even said he had tried robbing the house twice before. He told her of the robbery and assault only after they transferred to Carmona, Cavite. He initially kept silent on Pria's non-participation since he was angry at her for causing his arrest.

The court a quo found the prosecution's evidence convincing and disposed as follows:

"WHEREFORE, in view of the foregoing considerations, the prosecution having proven the guilt of the accused Rodelo Palijon y Urhina and Myra Pria y Bagsic each of them is sentenced to suffer the penalty of:

"1. Reclusion perpetua for the death of Gonzalo Reyes;

"2. Four (4) years, two (2) months and one (1) day to six (6) years of prision correccional for the infliction of serious physical injuries to (sic) Mellorequina Reyes;

"3. To pay the heirs of said deceased the sum of P100,000.00 at P50,000.00 each of the said accused;

"4. For lack of evidence to prove the civil liability of both accused of the medical expenses of Mellorequina Reyes no award could be made;

"5. Both accused are entitled to the full credit of their preventive imprisonment; and

"6. To pay the costs. "SO ORDERED."[9]

On September 6, 1995, Palijon filed his notice of appeal to this Court, while Pria moved for reconsideration of the trial court's decision.

On October 11, 1995, the court denied Pria's motion for reconsideration.

On October 18, 1995, Pria filed her notice of appeal.

In his brief, Palijon assigns the sole error that:

THE TRIAL COURT ERRED IN CONVICTING ACCUSED-APPELLANT RODELO PALIJON OF THE CRIME CHARGED BEYOND REASONABLE DOUBT.

Appellant Pria assigned in her brief the following errors:

I

THE LOWER COURT ERRED IN HOLDING THAT MYRA PRIA IS A CO-CONSPIRATOR WITH THE OTHER ACCUSED JIM MERCENE, RODELO PALIJON AND CARLITO DECENA.

II

THE LOWER COURT ERRED IN HOLDING THAT ROBBERY HAS BEEN CONSUMMATED WHEN THERE WAS NO SHOWING OR PROOF ON THE PART OF THE PROSECUTION THAT ASPORTATION HAS BEEN ESTABLISHED BEYOND REASONABLE DOUBT.

III

THE LOWER COURT ERRED IN CONVICTING ACCUSED-APPELLANT MYRA PRIA WITH ROBBERY HOMICIDE WHEN ROBBERY ITSELF HAS BEEN PROVED AS CONCLUSIVELY AS ANY OTHER ESSENTIAL ELEMENT OF THE CRIME.

IV

THE LOWER COURT ERRED IN NOT HOLDING THAT THE EVIDENCE ON RECORD IS INSUFFICIENT TO WARRANT CONVICTION.

V

THE LOWER COURT ERRED IN NOT HOLDING THAT DEFENDANT APPELLANT WAS DENIED DUE PROCESS.

We find pertinent the following issues:

- (1) Was there a violation of due process in the case of appellant Myra Pria?
- (2) Did the trial court correctly convict appellants of the crime of robbery with homicide instead of the lesser offense of homicide?
- (3) Was the guilt of appellants established beyond reasonable doubt?

On the first issue, Pria claims her arrest was illegal;^[10] that PNP-CIS operatives had no warrant of arrest when they took her; that there was no preliminary investigation conducted by the prosecutor; that she was not properly informed she was one of the accused in this case, thus her right to due process was violated.^[11]

The Office of the Solicitor General (OSG), in turn, argues that appellant Pria had already waived the rights she

invokes. The OSG points that Pria did not question the legality of her arrest immediately after detention; that she entered a plea on arraignment, thus waiving her rights to question any illegality in the conduct of her arrest.

Nowhere in the records can we find any objection by appellant Pria to the irregularity of her arrest before her arraignment. Any irregularity attendant to her arrest was deemed cured when she voluntarily submitted herself to the jurisdiction of the trial court with her entry of plea during her arraignment and by actively participating in the trial.[12] She pleaded on arraignment to the Information filed against her and her co-accused.[13] These acts clearly constitute a waiver against any unlawful restraint of liberty to which she may have been subjected.[14]

Pria avers that since no preliminary investigation was conducted on her case, her right to due process was violated. The records also show that Pria signed a waiver of her detention dated October 7, 1993, with the assistance of counsel at the office of the inquest prosecutor.[15] In said waiver, she asked for a preliminary investigation. Other than the prosecutor's certification that a preliminary investigation was conducted,[16] there are no records showing that a preliminary investigation was indeed conducted. When arraigned, appellant Pria pleaded to the charge sheet and did not protest that no preliminary investigation had been conducted as far as she was concerned. The right to a preliminary investigation is waived when the accused fails to invoke it before or at the time of entering a plea on arraignment.[17] By her failure to invoke her right to a preliminary investigation, Pria forfeited her right to one and she can no longer invoke it for the first time on appeal.[18]

On the second issue. It is Pria's contention that the prosecution failed to prove the vital element of asportation in robbery. Pria argues that from the testimony of Mercene there was no unlawful taking of any property of the Reyes spouses.[19] Hence, assuming without admitting, that Pria was indeed one of the conspirators, she could only be convicted of the lesser offense of homicide, and not robbery with homicide.

The special complex crime of robbery with homicide is primarily a crime against property and not against persons, the homicide being a mere incident of the robbery.[20] To sustain a conviction for robbery with homicide, it is essential that the robbery itself be proved beyond reasonable doubt.[21] The onus probandi is, thus, upon the prosecution to prove the following: (1) the taking of personal property with violence or intimidation against persons or by using force upon things; (2) that the property taken belongs to another; (3) that the taking was characterized by *animus lucrandi*; and (4) that on the occasion of the robbery or by reason thereof, homicide was committed.[22]

The prosecution presented both object and testimonial evidence that personal property of the victims were taken. Alvero testified that she was familiar with her mother's jewelry having borrowed some of the items on past occasions. After she inspected her parents' house she discovered cash and valuable pieces of jewelry missing.[23] Alvero also identified, in open court, the broken jewelry box, some pieces of fancy jewelry and other items of her mother recovered at the crime scene.[24] Under cross-examination, Alvero was categorical in her account that the more expensive pieces of jewelry of her mother were missing.[25] The trial court's assessment of the credibility of Alvero is entitled to great respect. It is binding on this court in the absence of any showing that the trial court's finding was not tainted with arbitrariness or oversight of some fact or circumstance of weight and influence.[26] We also note that the physical evidence of the prosecution corroborated Alvero's account that her parents had been robbed. Physical evidence is mute but an eloquent manifestation of truth and rates highly in the hierarchy of trustworthy evidence.[27]

On the third issue. It is appellant Pria's contention that the prosecution's evidence implicating her is weak and shaky. She points out that when her co-accused planned the robbery in appellant Palijon's house, she was some distance from them and could not have heard their scheme. She also avers that she was sleeping at the time of the incident, and did not participate in the robbery.

In the instant case, both prosecution witness Mercene and defense witness Decena admitted the existence of a conspiracy to rob the victims.[28] However, their versions as to the participation of appellant Pria differ. Mercene testified that he and his co-accused agreed to enter and rob the house of the Reyes couple during the wee hours of the morning of August 27, 1993. According to Mercene it was appellant Pria who: (1) informed them of the arrival of the Reyes spouses from abroad; (2) told them that the balikbayans had a lot of money being; and (3) told them how to enter the house.[29] Decena, admits that Pria was present when they plotted the robbery,[30] but vehemently insists that she had no participation in its planning. Decena claims that Pria was there only to attend to their child,[31] and she was sleeping when he and Mercene broke into the house of the victims.[32] To buttress Decena's testimony, the defense presented three of his letters to Pria, written in prison, clearing her of any knowledge or participation in the crime.[33]

After reviewing the transcripts and circumstances extant to the case, we find that the trial court did not err in giving credence to the testimony of Mercene. The latter testified that Pria was only 1-1/2 meters away from them when they were plotting the robbery.[34] The house of Palijon where they hatched their plan is a small, one-room house with an area of approximately twenty (20) meters only.[35] Both facts clearly show that Pria could easily participate in the discussion of the conspirators. Mercene's declarations are positive testimonial evidence. They outweigh Decena's unsubstantiated denial of Pria's participation in the criminal conspiracy. Denial, if unsubstantiated by clear and convincing evidence, deserves no weight in law and cannot be given greater evidentiary weight over the testimony of a credible witness who testifies on affirmative matters.[36]

In our view, notwithstanding her absence from the actual crime scene, Pria, as a conspirator, is as liable for robbery with homicide just as if she had participated in the actual robbing and killing. At the instant that the plotters agree, expressly or impliedly, to commit the crime and pursue it, each and every member of the conspiracy is criminally liable for the felony committed by anyone of them.[37]

Appellant Palijon denies he conspired with the others. He says the trial court erred in convicting him on the basis of the testimonies of his alleged conspirators. Their testimonies could not be taken against him under the principle of *res inter alios acta alteri nocere non debet* as formulated in Sections 28[38] and 30,[39] Rule 130, of the Rules of Court.

Palijon and Pria submit that the prosecution failed to establish the existence of a conspiracy and, did not overcome the presumption of innocence in their favor.

There is conspiracy to commit a crime, where at the time the malefactors of the crime, their actions impliedly showed a unity of purpose to attain their illicit ends.[40] One who joins a criminal conspiracy adopts in effect the criminal design of his co-conspirators and can no longer repudiate the conspiracy once it has materialized.[41]

In seeking an acquittal, appellant Palijon further contends that the trial court erred when it convicted him on the basis of the confession of his co-accused. Palijon argues that in determining the weight and sufficiency of the admissions of a self-confessed co-conspirator, the trial court should have exercised the greatest caution and held that such confession should have been corroborated by other evidence to establish his participation in the conspiracy or in the commission of the crime. Human experience teaches that a malefactor who admits the commission of a crime is likely to put the blame as much as possible on others other than himself alone.[42]

In ruling upon Palijon's arguments, we must make a distinction between extrajudicial and judicial confessions. An extrajudicial confession may be given in evidence against the confessant but not against his co-accused as they are deprived of the opportunity to cross-examine him. A judicial confession is admissible against the declarant's co-accused since the latter are afforded opportunity to cross-examine the former. Section 30, Rule 130 of the Rules of Court[43] applies only to extrajudicial acts or admissions and not to testimony at trial where the party

adversely affected has the opportunity to cross-examine the declarant.[44] Mercene's admission implicating his co-accused was given on the witness stand. It is admissible in evidence against appellant Palijon. Moreover, where several accused are tried together for the same offense, the testimony of a co-accused implicating his co-accused is competent evidence against the latter.[45]

Nor can we give credence to Palijon's defense of alibi. Mercene's identification of Palijon as one of the conspirators and participants in the crime was positive and categorical. His alibi cannot prevail over the positive identification made by the prosecution's eyewitness.[46]

With respect to the penalties imposed by the court a quo, the Office of the Solicitor General recommends that, while the penalty of reclusion perpetua for the robbery with homicide be affirmed, nonetheless, the penalty of four (4) years, two (2) months and one (1) day to six (6) years of prision correccional for the serious physical injuries inflicted upon Mrs. Reyes should not be imposed on appellants. To support its recommendation, the Solicitor General points to our ruling in *People v. Pamintuan*, 222 SCRA 716 (1993), where we held that the physical injuries committed during or on occasion of robo con homicidio, are absorbed therein, irrespective of the number of homicides or physical injuries committed.

We agree with the Solicitor General's recommendation. Both the killing and the physical injuries in the instant case were perpetrated during the robbery with the objective of removing both opposition and witnesses to the robbery. The physical injuries inflicted upon Mrs. Reyes and the killing of Mr. Reyes should thus be merged in the composite, integrated whole of robbery with homicide as penalized.[47] The term "homicide" under the Article 294 (1), of the Revised Penal Code is used in its generic sense, and embraces not only any act which results in death but also all other acts producing anything short of death.[48] Since the lighter offense of physical injuries cannot stand separately from the more serious crime of robbery with homicide, it follows that no separate penalty can be imposed for the physical injuries suffered by Mrs. Reyes. Only the penalty of reclusion perpetua may thus be correctly imposed.

WHEREFORE, the appealed judgment of the Regional Trial Court of San Pablo City, Branch 32, in Criminal Case No. 8768-SP, dated August 25, 1995, is **AFFIRMED WITH MODIFICATION**. Appellants **RODELO PALIJON Y URHINA** and **MYRA PRIA Y BAGSIC** are found guilty beyond reasonable doubt of the crime of robbery with homicide, and they are sentenced to suffer the penalty of reclusion perpetua and to pay jointly and severally the sum of P100,000.00 as indemnity to the widow Mellorequina Reyes and other heirs of the deceased Gonzalo Reyes, as well as to pay the costs.

SO ORDERED.

Bellosillo, (Chairman), Mendoza, Buena, and De Leon, Jr., JJ., concur.

[1] Also spelled as "Palejon" in the records.

[2] Sometimes referred to in the records and assailed decision as "Carlito Decena."

[3] "Exhibit A," Folder of Exhibits, p. 1.

[4] Records, p. 1.

[5] The case was later transferred and tried by Branch 32 of the same court upon motion of the prosecution.

[6] Records, p. 22.

[7] Id. at 187-188

- [8] TSN, June 20, 1994, p. 16.
- [9] Rollo, pp. 191-192.
- [10] CONST., art. III, sec. 2.
- [11] CONST., art. III, sec. 1.
- [12] *People v. Macam*, 238 SCRA 306, 315 (1994); *People v. Codilla*, 224 SCRA 104, 117 (1993); *People v. De Guzman*, 224 SCRA 93, 100 (1993).
- [13] Records, p. 8.
- [14] *People v. Silan*, 254 SCRA 491 (1996).
- [15] Exhibit "4," Exhibit "B," Folder of Exhibits, p. 12.
- [16] Records, p. 2.
- [17] *Go v. Court of Appeals*, 206 SCRA 138, 153 (1992).
- [18] *People v. Lazo*, 198 SCRA 274, 284 (1991).
- [19] TSN, January 4, 1994, p. 7
- [20] *People v. Salas*, G.R. No. 115192, March 7, 2000 citing *People v. Faco*, G.R. No. 115215, September 16, 1999, p. 17.
- [21] *People v. Aquino, et al.*, G.R. No. 129288, March 30, 2000 citing *People v. Martinado*, 214 SCRA 712 (1992).
- [22] *People v. Faco*, G.R. No. 115215, September 16, 1999, p. 17, citing *People v. Nang*, 289 SCRA 16, 28 (1998).
- [23] TSN, March 7, 1994, pp. 7-8.
- [24] TSN, March 8, 1994, pp. 6-7.
- [25] TSN, March 7, 1994, pp. 7-8.
- [26] *People v. Bello*, G.R. No. 104930, March 1, 2000, p. 6, citing *People v. Gutierrez Jr.*, 302 SCRA 643, 662-663 (1999) and *People v. Batidor*, 303 SCRA 335, 345 (1999).
- [27] *People v. Nepomuceno, Jr.*, 298 SCRA 450, 463 (1998) citing *People v. Uycoquia*, 246 SCRA 769 (1995).
- [28] TSN, December 15, 1993, pp. 5-7; TSN, January 4, 1994, p. 16-18; TSN, June 20, 1994, p. 22.
- [29] TSN, January 4, 1994, pp. 16-20.
- [30] TSN, June 20, 1994, p. 22
- [31] TSN, June 20, 1994, p. 22
- [32] *Id.* at 23-24. [33] Exhibits "1," "2," and "3," Folder of Exhibits, pp. 9-11.
- [34] TSN, January 4, 1994, p. 18.
- [35] TSN, June 20, 1994, p. 43.

[36] *People v. Sesbreño*, G.R. No. 121764, September 9, 1999, p. 22, citing *People v. Gondora*, 333 Phil. 240 (1996).

[37] *People v. Ortiz, et al.*, G.R. No. 118624, October 8, 1999, p. 8, citing *People v. Monroy*, 104 Phil. 759. (1958).

[38] "SEC. 28. Admission by third party. - The rights of a party cannot be prejudiced by an act, declaration, or omission of another, except as hereinafter provided." [39] "SEC. 30. Admission by conspirator. - The act or declaration of a conspirator relating to the conspiracy and during its existence may be given in evidence against the co-conspirator after the conspiracy is shown by evidence other than such act or declaration."

[40] *People v. Desoy, et al.*, G.R. No. 127754, August 16, 1999, p. 12.

[41] *People v. Boco*, 309 SCRA 42, 64 (199).

[42] *People v. Sarmiento*, 69 Phil. 740, 742 (1940).

[43] SEC. 30. Admission by conspirator.-The act or declaration of a conspirator relating to the conspiracy and during its existence, may be given in evidence against the co-conspirator after the conspiracy is shown by evidence other than such act or declaration.

[44] *People v. Flores*, 195 SCRA 295, 308 (1991) citing *People v. Encipido*, 146 SCRA 478 (1986); *People v. Victor*, 181 SCRA 818, 830 (1990).

[45] *People v. Ponce*, 197 SCRA 746, 755 (1991) citing *People v. Robante*, 178 SCRA 552 (1989).

[46] *People v. Cerbito, et al.*, G.R. No. 126397, February 1, 2000, p. 11.

[47] *People v. Lascuna*, 225 SCRA 386, 404 (1993).

[48] *People v. Zuela, et al.*, G.R. No. 112177, January 28, 2000 citing *People v. Servillon*, 236 SCRA 385, 392 (1994).

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