

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JOSELITO DEL ROSARIO Y PASCUAL, ACCUSED-APPELLANT.*G.R. No. 127755. April 14, 1999*

Ponente: BELLOSILLO, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-127755/>**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 -

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?

A: There was, sir.

Q: Who was shot?

A: Jun Marquez shot the woman, sir x x x x

Q: When the bag of the woman was being grabbed you know that what was transpiring was wrong and illegal?

A: Yes, sir.

Q: But you did not try to leave?

A: I tried to leave but Boy Santos who was inside my tricycle prevented me.

Q: During that time before you leave (sic) how many firearms did you see?

A: Two firearms, sir, one in the possession of Boy (Jun?) Marquez and one in the possession of Boy Santos x x x x

Q: And at the time when the shooting took place where was Boy Santos?

A: He was still inside my tricycle, sir.

Q:

And during the shooting when Boy Santos was inside the tricycle and when you tried to escape that was the time when Boy Santos threatened you if you will escape something will happen to your family?

A: Yes, sir.

Q: After the shooting who first boarded the tricycle, Boy (Jun?) Marquez or Dodong Visaya?

A:

Dodong Visaya, sir.

Q: And immediately thereafter Jun Marquez boarded your tricycle sitting at your back?

A: Yes, sir.[24]

On cross-examination, accused further stated -

Q: After shopping in that place for one minute what else happened?

A: I saw Dodong Bisaya grabbing the bag of the woman, sir.

Q: How about your two companions, what are (sic) they doing while Dodong Bisaya was grabbing the bag of the woman?

A: Jun Marquez was helping Dodong Bisaya, sir.

Q: What happened after Jun Marquez helped Dodong Bisaya?

A: I heard a gunshot and I saw the woman lying down x x x x

Q: You could have ran away to seek the help of the police or any private persons?

A: I was not able to ask for help because Boy Santos pointed his gun to me, sir.

Q: Was the gun being carried by Boy Santos, is the one that is used in shooting the old woman?

A: No, sir x x x x.

Q:

Where was Boy Santos when Dodong Bisaya and Jun Marquez were grappling for the possession of the handbag?

A: He was then inside the tricycle, sir x x x x[25]

Q:

Mr. Witness, you testified that the reason why you just cannot leave the area where the incident occurred is because a gun was pointed to you by Boy Santos and he was telling you that you should not do anything against their will, they will kill you and your family will be killed also, is that correct?

A: Yes, sir.

Q:

Now, is it not a fact that at the time you stop (sic) your tricycle which was loaded by your other three co-accused in this case, all of them alighted and that Boy Santos ran after a helper of the victim going towards the public market along Burgos Street?

A: He did not alight from the tricycle, sir.

Court: Are you quite sure of that?

A: Yes, sir.[26]

Del Rosario maintains that "Boy" Santos never left the tricycle and that the latter pointed his gun at him and threatened to shoot if he tried to escape. He also asserted that it was "Jun" Marquez who shot the victim and sat behind him in the tricycle.

From the narration of witness Alonzo, these events stood out: that after the bag of the victim was grabbed, her male helper was chased by a man holding a gun; that the gunwielder returned and shot the victim and then sat behind the driver of the tricycle; and, the bag was given to a person who was inside the tricycle. Taking the testimony of witness Alonzo in juxtaposition with the testimony of del Rosario, it can be deduced that "Jun" Marquez was the person witness Alonzo was referring to when he mentioned that a helper of the lady was chased "by the other man" and that this "other man" could not be "Boy" Santos who stayed inside the tricycle and to whom the bag was handed over. This conclusion gives credence to the claim of del Rosario that "Boy" Santos never left the tricycle, and to his allegation that "Boy" Santos stayed inside the tricycle precisely to threaten him with violence and prevent him from fleeing; that there could have been no other plausible reason for "Boy" Santos to stay in the tricycle if the accused was indeed a conspirator; that "Boy" Santos could have just left the tricycle and helped in the commission of the crime, particularly when he saw the victim grappling with "Dodong" Bisaya and resisting the attempts to grab her bag; and, that "Boy" Santos opted to remain inside the tricycle to fulfill his preordained role of threatening del Rosario and insuring that he would not escape and leave them behind.[27]

Even if the tricycle of del Rosario was only parked one meter and a half (1½) in front of the tricycle of witness Alonzo, the latter still could not have totally seen and was not privy to events that were transpiring inside the vehicle, i.e., the pointing of the gun by "Boy" Santos at del Rosario simultaneously with the robbing and shooting of the victim. From the exhibits submitted by the prosecution panel the back of the sidecar of del Rosario tricycle was not transparent.[28]

There is no doubt that the fear entertained by del Rosario because of the gun directly pointed at him was real and imminent. Such fear rendered him immobile and subject to the will of Boy Santos, making him for the moment of automaton without a will of his own. In other words, in effect, he could not be any more than a mere instrument acting involuntarily against his will. He is therefore exempt from criminal liability since by reason of fear of bodily harm he was compelled against his will to transport his co-accused away from the crime scene.

On the issue of conspiracy, the trial court anchored del Rosario's conviction on his participation in the

orchestrated acts of "Boy" Santos, "Jun" Marquez and "Dodong" Bisaya. According to the trial court, del Rosario facilitated the escape of the other malefactors from the crime scene and conspiracy between accused and his passengers was evident because "while the grappling of the bag, the chasing of the helper of the victim and the shooting that led to the death of Virginia Bernas were happening, accused Joselito del Rosario was riding on his tricycle and the engine of the motor was running;"[29] that the "accused did not deny that the tricycle driven by him and under his control was hired and used by his co-accused in the commission of the crime; neither did he deny his failure to report to the authorities the incident of robbery, killing and fleeing away from the scene of the crime." [30]

We disagree with the trial court. A conspiracy in the statutory language exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. The objective of the conspirators is to perform an act or omission punishable by law. That must be their intent. There is need for "concurrence of wills" or "unity of action and purpose" or for "common and joint purpose and design." Its manifestation could be shown by "united and concerted action." [31]

Admittedly, direct proof is not essential to establish conspiracy. Since by its nature conspiracy is planned in utmost secrecy, it can rarely be proved by direct evidence. Consequently, the presence of the concurrence of minds which is involved in conspiracy may be inferred from proof of facts and circumstances which, taken together, apparently indicate that they are merely parts of some complete whole. If it is proved that two or more persons aimed by their acts towards the accomplishment of the same unlawful object, each doing a part so that their combined acts, though apparently independent, were in fact connected and cooperative, indicating a closeness of personal association and a concurrence of sentiment, a conspiracy may be inferred though no actual meeting among them to concert means is proved. That would be termed an implied conspiracy. [32] Nevertheless, mere knowledge, acquiescence or approval of the act, without the cooperation or agreement to cooperate, is not enough to constitute one a party to a conspiracy, but that there must be intentional participation in the transaction with a view to the furtherance of the common design and purpose. Conspiracy must be established, not by conjectures, but by positive and conclusive evidence. In fact, the same degree of proof necessary to establish the crime is required to support a finding of the presence of a criminal conspiracy, which is, proof beyond reasonable doubt. [33]

In the instant case, while del Rosario admits that he was at the locus criminis as he was the driver of the getaway vehicle, he nonetheless rebuts the imputation of guilt against him by asserting that he had no inkling of the malevolent design of his co-accused to rob and kill since he was not given any briefing thereof. He was merely hired by Boy Santos to drive to an agreed destination and he was prevented at gunpoint from leaving the scene of the crime since he was ordered to help them escape.

In this case, the trial court stated that "there is no evidence that the accused came to an agreement concerning the commission of the felony and decided to commit the same." [34] Therefore, in order to convict the accused, the presence of an implied conspiracy is required to be proved beyond reasonable doubt. However, the fact that del Rosario was with the other accused when the crime was committed is insufficient proof to show cabal. Mere companionship does not establish conspiracy. [35] The only incriminating evidence against del Rosario is that he was at the scene of the crime but he has amply explained the reason for his presence and the same has not been successfully refuted by the prosecution. As stated earlier, he feared for his safety and security because of the threat made by his co-accused that he would, be killed should he shout for help. No complicity can be deduced where there is absolutely no showing that the accused directly participated in the overt act of robbing and shooting although he was with the persons who robbed and killed the victim. [36]

That del Rosario did not disclose what he knew about the incident to the authorities, to his employer or to the

barangay captain does not affect his credibility. The natural hesitance of most people to get involved in a criminal case is of judicial notice.[37] It must be recalled that del Rosario was merely a tricycle driver with a family to look after. Given his quite limited means, del Rosario understandably did not want to get involved in the case so he chose to keep his silence. Besides, he was threatened with physical harm should he squeal.

Del Rosario further contends that there was violation of his right to remain silent, right to have competent and independent counsel preferably of his own choice, and right to be informed of these rights as enshrined and guaranteed in the Bill of Rights.[38] As testified to by SP04 Geronimo de Leon, the prosecution witness who was the team leader of the policemen who investigated the 13 May incident, during his cross-examination -

Upon finding the name of the owner of the tricycle, they proceeded to Bakod Bayan in the house of the barangay captain where the owner of the tricycle was summoned and who in turn revealed the driver's name and was invited for interview. The driver was accused Joselito del Rosario who volunteered to name his passengers on May 13, 1996. On the way to the police station, accused informed them of the bag and lunch kit's location and the place where the hold-uppers may be found and they reported these findings to their officers, Capt. Biag and Capt. Cruz. After lunch, they proceeded to Brgy. Dicarma composed of 15 armed men where a shoot-out transpired that lasted from 1:00 to 4:00 o'clock in the afternoon. After a brief encounter, they went inside the house where they found Marquez dead holding a magazine and a gun. While all of these were happening, accused del Rosario was at the back of the school, after which they went back to the police station. The investigator took the statement of the accused on May 14, 1996, and was only subscribed on May 22, 1996. All the while, he was detained in the police station as ordered by the Fiscal. His statements were only signed on May 16, 1996. He also executed a waiver of his detention. His Sinumpaang Salaysay was done with the assistance of Ex-Judge Talavera.[39]

A further perusal of the transcript reveals that during the encounter at Brgy. Dicarma, del Rosario was handcuffed by the police because allegedly they had already gathered enough evidence against him and they were afraid that he might attempt to escape.[40]

Custodial investigation is the stage where the police investigation is no longer a general inquiry into an unsolved crime but has begun to focus on a particular suspect taken into custody by the police who carry out a process of interrogation that lends itself to elicit incriminating statements. It is well-settled that it encompasses any question initiated by law enforcers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way.[41] This concept of custodial investigation has been broadened by RA 7438[42] to include "the Practice of issuing an 'invitation' to a person who is investigated in connection with an offense he is suspected to have committed." Section 2 of the same Act further provides that -

x x x Any public officer or employee, or anyone acting under his order or in his place, who arrests, detains or investigates any person for the commission of an offense shall inform the latter, in a language known and understood by him of his right to remain silent and to have competent and independent counsel, preferably of his own choice, who shall at all times be allowed to confer privately with the person arrested, detained or under custodial investigation. If such person cannot afford the services of his own counsel, he must be provided with a competent and independent counsel by the investigating officer.

From the foregoing, it is clear that del Rosario was deprived of his rights during custodial investigation. From the time he was "invited" for questioning at the house of the barangay captain, he was already under effective custodial investigation, but he was not apprised nor made aware thereof by the investigating officers. The police already knew the name of the tricycle driver and the latter was already a suspect in the robbing and senseless slaying of Virginia Bernas. Since the prosecution failed to establish that del Rosario had waived his right to remain silent, his verbal admissions on his participation in the crime even before his actual arrest were inadmissible against him, as the same transgressed the safeguards provided by law and the Bill of Rights.

Del Rosario also avers that his arrest was unlawful since there was no warrant therefor. Section 5, Rule 113 of the Rules of Court provides:[43]

Sec. 5. Arrest without warrant; when lawful. - A peace officer or a private person may, without a warrant, arrest a person: (a) When, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense; (b) When an offense has in fact been committed and he has personal knowledge of facts indicating that the person to be arrested has committed it; and, (c) When the person to be arrested is a prisoner who has escaped from penal establishment or place where he is serving final judgment or temporarily confined while his case is pending, or has escaped while being transferred from one confinement to another.

It must be recalled that del Rosario was arrested by SPO4 De Leon during the police raid at the place of "Jun" Marquez at Brgy. Dicarma on 14 May 1996. In *People vs Sucro*[44] we held that when a police officer sees the offense, although at a distance, or hears the disturbances created thereby, and proceeds at once to the scene thereof, he may effect an arrest without a warrant on the basis of Sec. 5, par. (a), Rule 113, since the offense is deemed committed in his presence or within his view. In essence, Sec. 5, par. (a), Rule 113, requires that the accused be caught in flagrante delicto or caught immediately after the consummation of the act. The arrest of del Rosario is obviously outside the purview of the aforementioned rule since he was arrested on the day following the commission of the robbery with homicide.

On the other hand, Sec. 5, par. (b), Rule 113, necessitates two (2) stringent requirements before a warrantless arrest can be effected: (1) an offense has just been committed; and (2) the person making the arrest has personal knowledge of facts indicating that the person to be arrested had committed it. Hence, there must be a large measure of immediacy between the time the offense was committed and the time of the arrest, and if there was an appreciable lapse of time between the arrest and the commission of the crime, a warrant of arrest must be secured. Aside from the sense of immediacy, it is also mandatory that the person making the arrest must have personal knowledge of certain facts indicating that the person to be taken into custody has committed the crime.[45] Again, the arrest of del Rosario does not comply with these requirements since, as earlier explained, the arrest came a day after the consummation of the crime and not immediately thereafter. As such, the crime had not been "just committed" at the time the accused was arrested. Likewise, the arresting officers had no personal knowledge of facts indicating that the person to be arrested had committed the offense since they were not present and were not actual eyewitnesses to the crime, and they became aware of his identity as the driver of the getaway tricycle only during the custodial investigation.

However the conspicuous illegality of del Rosario's arrest cannot affect the jurisdiction of the court a quo because even in instances not allowed by law, a warrantless arrest is not a jurisdictional defect and any objection thereto is waived when the person arrested submits to arraignment without any objection, as in this case.[46]

A transgression of the law has occurred. Unfortunately, an innocent person lost her life and property in the process. Someone therefore must be held accountable, but it will not be accused Joselito del Rosario; we must acquit him. Like victim Virginia Bernas, he too was a hapless victim who was forcibly used by other persons with nefarious designs to perpetrate a dastardly act. Del Rosario's defense of "irresistible force" has been substantiated by clear and convincing evidence. On the other hand, conspiracy between him and his co-accused was not proved beyond a whisper of a doubt by the prosecution, thus clearing del Rosario of any complicity in the crime charged.

WHEREFORE, the decision of the Regional Trial Court of Cabanatuan City convicting accused JOSELITO DEL ROSARIO Y PASCUAL of Robbery with Homicide and sentencing him to death, is REVERSED and SET ASIDE, and the accused is ACQUITTED of the crime charged. His immediate RELEASE from confinement is

ordered unless held for some other lawful cause. In this regard, the Director of Prisons is directed to report to the Court his compliance herewith within five (5) days from receipt hereof.

SO ORDERED.

Davide, Jr., C.J., Romero, Melo, Puno, Vitug, Kapunan, Mendoza, Panganiban, Quisumbing, Purisima, Pardo, Buena, Gonzaga-Reyes, and Ynares-Santiago, JJ. concur.

[1] Decision penned by Judge Feliciano V. Buenaventura, RTC-Br. 27, Cabanatuan City.

[2] Rollo, p. 24.

[3] Id., p. 25.

[4] TSN, 9 July 1996, pp. 3-9; 11 July 1996, pp. 27-28, 31-32.

[5] Id., 4 September 1996, p. 15.

[6] Id., p. 10.

[7] Id., p. 15.

[8] Id., 12 September 1996, p. 6.

[9] See Note 4, p. 16.

[10] See Note 7, p. 8.

[11] TSN, 28 August 1996, pp. 3-7.

[12] Id., 13 September 1996, p. 21.

[13] See Note 10, p. 7.

[14] See Note 7, p. 16.

[15] Appellant's Brief, pp. 56-57.

[16] Id., p. 82.

[17] See Note 1, p. 75.

[18] *People v. Lorena*, G.R. No. 54414, 9 July 1984, 130 SCRA 311.

[19] Rollo, pp. 407-408.

[20] The decision reads (p. 74) x x x they rode in the tricycle of the accused and went near NITA'S DRUG STORE at Juan Luna Street, Cabanatuan City; while there, JUN MARQUEZ and DODONG BISAYA waylaid VIRGINIA BERNAS, grappled with her for the possession of the bag; while they were grappling, BOY SANTOS saw the male helper of VIRGINIA BERNAS and he ran after him and in a few seconds returned to the place where he found the victim VIRGINIA BERNAS lying down; BOY SANTOS shot the victim and from there, they fled to Dicarma, Cabanatuan City, where JUN MARQUEZ, DODONG BISAYA and BOY SANTOS alighted from the tricycle x x x x.

[21] TSN, 9 July 1996, pp. 4-7.

[22] Id., 11 July 1996, pp. 27-28.

[23] Id., pp. 31-32.

[24] Id., 28 August 1996, pp. 3-6.

[25] Id., 12 September 1996, pp. 9-10.

[26] Id., 13 September 1996, p. 2.

[27] Comment on Appellee's Brief, pp. 12-13.

[28] Exhibits P-7 and P-9.

[29] Rollo, p. 74.

[30] Id., p. 75.

[31] People v. Taaca, No. L-35652, 29 September 1989, 178 SCRA 56.

[32] People vs. Orodio, G.R. No. 57519, 13 September 1988, 165 SCRA 316.

[33] People vs. Furugganan, G.R. Nos. 90191-96, 28 January 1991, 193 SCRA 471.

[34] See Note 1, p. 73.

[35] See Note 33, p. 481.

[36] Ibid.

[37] People v. Estocada, No. L-31024, 28 February 1977, 75 SCRA 295.

[38] Rollo, p. 224.

[39] Id., p. 27.

[40] TSN, 3 July 1996, p. 5.

[41] People v. Herson Tan y Verzo, G.R. No. 117321, 11 February 1998.

[42] An Act Defining Certain Rights of Person Arrested, Detained or Under Custodial Investigation As Well As Duties of the Arresting, Detaining and Investigating Officer and Providing Penalties for Violations Thereof. Approved 15 May 1992.

[43] Rollo, pp. 244-245.

[44] G.R. No. 93239, 18 March 1991, 195 SCRA 388.

[45] Pamaran, Manuel R., The 1985 Rules of Criminal Procedure Annotated, 1998 Ed., p. 204.

[46] Regalado, Florenz D., Remedial Law Compendium, 1995 Ed., p. 323.

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