

PEOPLE OF THE PHILIPPINES, PLAINTIFF, VS. MAJOR EMILIO COMILING, GIL SALAGUBANG (ACQUITTED), MARIO CLOTARIO (ACQUITTED), GERALDO GALINGAN, EDDIE CALDERON (AT LARGE), BALOT CABOT...

G.R. No. 140405. March 04, 2004

Ponente: CORONA, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-140405/>

CORONA, J.:

This is an automatic review of the decision[1] dated September 1, 1999 of the Regional Trial Court, Branch 51, Tayug, Pangasinan, convicting Maj. Emilio Comiling, Geraldo Galingan alias “Bong” and Ricky Mendoza alias “Leo” of the crime of robbery with homicide and sentencing them to suffer the extreme penalty of death.

The three accused were charged under an information which alleged:

The undersigned hereby accuses MAJOR EMILIO COMILING, GIL SALAGUBANG, BONG CLOTARIO, GERALDO GALINGAN, EDDIE CALDERON, BALOT CABOTAJE and RICKY MENDOZA @ Leo of the crime of ROBBERY WITH HOMICIDE and PHYSICAL INJURIES, committed as follows: That on or about the 2nd day of September, 1995, in the evening, inside the Masterline Grocery located at Bonifacio Street corner Quezon Blvd., municipality of Tayug, province of Pangasinan, Philippines and within the jurisdiction of this Honorable Court, the above-named accused including certain JOE, REY and PAUL, whose family names have not yet been known, armed with firearms and handgrenade, aboard an owner-type stainless jeep and motorized tricycle, with intent to gain and with the use of violence against or intimidations upon persons, conspiring, confederating and helping one another, did then and there wilfully, unlawfully and feloniously enter the Masterline Grocery pretending to be customers and once inside, poked their guns and intimidated the owner of said grocery, MR. INCIONG CO, and his worker to open the drawers of the tables of said grocery and when opened, took and carried away EIGHTY ONE THOUSAND PESOS (P81,000.00) and three (3) pieces of Chinese gold necklace worth TWENTY SIX THOUSAND PESOS (P26,000.00), and afterwhich the above-named accused on their way out to escape with their loot, shot and hit a responding Tayug Policeman, PO3 ERWIL V. PASTOR, mortally wounding him on his face that subsequently led to his untimely death, and when said accused were cornered by other responding policemen, ran and passed to an adjacent store (Good Taste Bakery) and used it as their exit and while there also shot, hit and mortally wounded MRS. CONCHING CO, the owner of said bakery causing her injuries, the accused having thus performed the acts of execution which would have produced the crime of Homicide as a consequence, but nevertheless did not produce it by reason of causes independent of the will of the accused, and that is due to the timely and able medical assistance rendered to the said MRS. CONCHING CO, to her damage and prejudice and also to the heirs of PO3 ERWIL V. PASTOR.

CONTRARY to Article 294, par. 1 of the Revised Penal Code.[2]

Accused Eddie Calderon and Balot Cabotaje have remained at large to this day. The remaining accused (Comiling, Galingan, Mendoza, Salagubang and Clotario) pleaded not guilty during their arraignment. Trial on the merits ensued thereafter.

On March 28, 1997, Mendoza escaped from detention and was thus tried in absentia.

The records show that at sundown on September 2, 1995, Ysiong Chua, the owner of Masterline Grocery and his helper Mario were about to close the store when someone knocked on the door to buy some cigarettes. Masterline was located at the corner of Quezon Blvd. and Bonifacio St. in Tayug, Pangasinan.

As soon as Mario opened the door, three masked, armed men suddenly barged into the store and announced a hold-up. One of the robbers shoved Ysiong into the recesses of the grocery where he threatened to kill him if he did not give them his earnings. Ysiong retorted that he only had a small amount, which remark apparently irked the robber who then hit Ysiong's thumb with the butt of his gun. A simultaneous kick made the grocer fall down in pain.

As Ysiong lay prostrate on the floor, he saw the two other intruders, and a little later the robber who hit him, ransacking the drawers of his desk. Fortunately, he was able to quickly recover from the blows; whereupon he darted to the adjacent Good Taste Bakery and out to the Tayug Police Station farther west along Quezon Blvd. to report the incident.

SPO1 Rolando Torio, PO3 Erwil Pastor and SPO4 Emilio Nagui of the Tayug Police Station rushed to the crime scene where SPO1 Torio chanced upon Sonny Rimas, a barangay councilman, and his friend Jessie Batalla at the grocery entrance. He asked them if they knew what was going on inside the store but the two did not answer. While SPO1 Torio was standing outside the store's door, he heard three gunshots coming from inside the store, all directed towards Bonifacio Street. PO3 Pastor was then on the street while Nagui was some 50 meters away. PO3 Pastor ran and hid behind a concrete marker, then moved westward as if to return to the police headquarters. Unfortunately, in his attempt to flee, PO3 Pastor was shot in the face. He was rushed to the Eastern Pangasinan District Hospital. On September 6, 1995, PO3 Pastor died from the injury he suffered.

Meanwhile, Ysiong discovered that he lost three gold necklaces worth P26,000 and cash amounting to P81,000.

On September 26, 1995, bothered by her conscience, prosecution witness Naty Panimbaan decided to reveal to police authorities what she knew about the case. During the trial, she testified that she was present in all the four meetings in which the plan to rob the Masterline Grocery was hatched.

The first meeting was on June 30, 1995 at the Zariza Inn in Tayug, Pangasinan. Among those present were Comiling, Galingan, Salagubang, Calderon, Clotario and Mendoza, along with two other persons known only as Paul and Rey. Another meeting was held by the group in July 1995 in the house of a certain Lani Galingan also in Tayug, Pangasinan. There were two other meetings in August 1995. Finally, on September 2, 1995, the group met at Lani's house where they received their final instructions and the firearms they were to use from Comiling and Galingan. The entire group headed for Masterline Grocery at around 4:00 p.m. except for Naty who stayed behind in Lani's house.

At around 8:00 p.m., she met the group in the house of a person named Joe. Galingan blamed a companion for shooting the policeman. The group planned to escape to Manila. She and Lani were given \$50 by Galingan for their fare to Manila. Upon arrival there on September 3, 1995, they, together with Galingan, proceeded to Comiling's house in Parañaque. They discussed where she and Lani should stay as Comiling did not want them around. Comiling decided that the two of them should stay in Makati. It was while she was hiding in Makati that she was able to reflect on the events that transpired, gathering enough courage to confess the robbery to the police authorities.[3]

On the other hand, all the accused denied culpability for the felony. Each of them claimed to be somewhere else at the time the crime happened on September 2, 1995. The witnesses for the defense also tried to impugn the

credibility of the lead witness for the prosecution, Naty Panimbaan.

On September 1, 1999, the trial court rendered its decision, the dispositive portion of which read:

WHEREFORE, the prosecution having failed to establish their alleged guilt beyond moral certainty, a judgment of ACQUITTAL is hereby rendered in favor of the accused Gil Salagubang and Mario Clotario alias “Bong,” and their respective bail bonds are hereby ordered released.

However, on the basis of the evidence the prosecution has adduced, which in the Court’s perception satisfies the requisite proof beyond reasonable doubt as mandated by Section 2, Rule 133 of the Rules of Court, the Court hereby renders a judgment, as to the accused MAJ. EMILIO COMILING of Block 18, Lot 3, Camella Classic Phase II, Bicutan, Parañaque, Metro Manila, GERALDO GALINGAN alias “Bong” of Iris, Brgy. “B,” Tayug, Pangasinan and RICKY MENDOZA, said to be a resident of Parañaque, Metro Manila, as per records of the BJMP district jail, Balugnao, Pangasinan, finding them GUILTY of the special complex crime of ROBBERY WITH HOMICIDE, defined and penalized under paragraph 1, Article 294 of the Revised Penal Code as amended, and pursuant to paragraph 1, Article 63, same Code, hereby sentences them to each suffer the penalty of DEATH, and in solidum to restitute, when possible, to private complainant Ysiong Chua his lost valuables, otherwise to make reparation therefor and pay to him their value of P26,000.00, plus the cash amount aggregating P81,000.00, and the heirs of PO3 Erwil Pastor, P50,000.00 for his death, and P100,000.00 for consequential damages as naturally must have arisen therefrom; and, to pay the costs.

SO ORDERED.[4]

Appellants Comiling and Galingan filed separate appeal briefs.

Appellant Comiling, who was a major in the Philippine Army, assails his conviction by asserting that the killing of PO3 Erwil Pastor happened after the robbery took place, hence the “homicide” could not have been a necessary means of committing the robbery. Neither could it be said that the robbery produced another offense.

The argument is specious. As correctly stressed by the Solicitor General, robbery with homicide is a “special complex crime.” It is enough that in order to sustain a conviction for this crime, the killing, which is designated as “homicide,” has a direct relation to the robbery, regardless of whether the latter takes place before or after the killing. For as long as the killing occurs during or because of the heist, even if the killing is merely accidental, robbery with homicide is committed.

Comiling also questions the credibility of the prosecution witnesses, particularly Naty Panimbaan, who was supposedly a polluted source since she was one of the conspirators. The reasoning is out of line. This Court is not a trier of facts. All we have to discern from the records to believe the trial court’s findings is a reasonable basis for its method of examining the credibility of witnesses and its assessment thereof. We do not second-guess the court a quo for as long as it does not gravely abuse such power.

In the case at bar, there is nothing to suggest that the trial court was whimsical or capricious in the performance of its tasks. Thus we have no recourse but to uphold its findings on the credibility of Naty Panimbaan and of the other prosecution witnesses. In any event, as correctly stated by the Solicitor General, Naty Panimbaan was examined three times not only under the close scrutiny of two defense counsels but also, in some instances, under the abrasive tirades of the trial judge who called her a “whore.” Yet, despite the trial court’s apparent misgivings about her character, it still gave full credence to her testimony:

None of their dark attributes dissuades the Court from giving credence to their respective narratives, however. The Court agrees that Panimbaan knew too much, for her open-court testimony was abundantly detailed, generally consistent, straightforward and credible.

xxx xxx xxx

The Court believes Panimbaan's testimony that finally, at around 4:00 o'clock in the afternoon of September 2, 1995 the accused Comiling, Galingan, Calderon, Clotario and Mendoza, together with Rimas, Paul, Rey and Jose left Lani's place, while she stayed behind.

The Court believes Panimbaan's testimony that all throughout the four meetings conducted before September 2, the accused Comiling and Galingan presided, gave instructions and provided firearms and explosives.[5]

We find no compelling reason to disturb the factual findings and conclusions of the trial court. Indeed, prosecution witness Naty Panimbaan proved credible during the trial. She never wavered in her testimony on the details of the crime:

ATTY. CALPITO:

Q

Since when was Geraldo Galingan your boyfriend, if you can still remember?

A

Since September 1994, sir.

Q

You mentioned a while ago that they are going to talk (sic) their plan to rob the Masterline Grocery, who are these people whom you refer as they?

A

Maj. Comiling, Gil Salagubang, Eddie Calderon, certain Paul, Leo, Rey and Eddy, Bong Clotario and Sonny Rimas.

ATTY. CALPITO:

Q

How about your boyfriend Geraldo Galingan?
Would he or would he not participate?

A

He was there, sir. He was one.

Q

And so Madam Witness, when you were there at Zariza Village Inn, who were the persons whom you saw there, if any?

A

We were inside the hotel. When we arrived I saw the group of Maj. Comiling.

Q

You refer to a group of Maj. Comiling, will you be kind enough to enumerate their names?

A

Maj. Emilio Comiling, Bong Galingan, Eddie Calderon, Gil Salagubang, Sonny Rimas, Bong Clotario, Rey and Paul.

Q

Madam Witness, when you said that you saw this group when you arrived there, what did you do upon arrival there?

COURT:

When you said you whom you were (sic) referring to? He or a bigger number?

ATTY. CALPITO:

Q

What did you do? Specifically you, sir.

A

I sat beside them.

Q

Will you tell the Honorable Court your distance from the members of the group when you sat beside them?

COURT:

That will be very difficult to answer, counsel. Since this was a group you will have to measure the distance from one person to another and up to the last member of the group. Why don't you refer to the group as a whole? And probably establish who was nearest to her.

ATTY. CALPITO:

Q

Madam Witness, when you said you went and sat beside the group, will you then describe the physical arrangement of the group when you went and sat beside them?

A

I was beside Bong Galingan and the group was in a circle formation.

Q

And so what transpired when you were there within the group, Madam Witness?

A

Since I was beside them I overheard their conversation.

Q

And what was the conversation all about, Madam Witness?

A

That they are going to stage a hold-up at the Masterline Grocery, sir.

Q

What was the result of that conversation?

A

The others left.

Q

Who specifically left?

A

Eddie Calderon, Sonny Rimas.

Q

Who else, if any?

A

Bong Clotario.

Q

And do you know the reason why these three persons left?

A

Yes, sir.

Q

Please tell the reasons to the Court?

A

They observed the Masterline Grocery if there are policemen or people around and when they came back they said it is not possible.

COURT:

Q

How did you come to the conclusion that the three persons left in order to observe because you told that you stayed behind?

WITNESS:

A

We were all there, sir, when Maj. Comiling ordered that they must go to the Masterline Grocery.

COURT:

Q

For what purpose, if any?

A

To stage a hold-up.

Q

You mean Galingan and Comiling ordered them to go and hold-up Masterline at that time when they were

about to leave?

A

Bong Galingan and Maj. Comiling ordered these men because they were the brains of that hold-up.

Q

And whom did they order?

A

Their men, sir.

Q

Who?

A

Clotario, Calderon and Rimas.

Q

I am referring to the three whom (sic) according to you left. Were they ordered by Galingan and Comiling to leave?

A

Yes, sir.

Q

Do you know what for?

A

Yes, sir.

Q

What?

A

They will observe the Masterline grocery.

ATTY. CALPITO:

Q

Madam Witness, you said that when the three persons you just named came back and said it is not yet possible, what was the consensus of the group, if any?

A

They drank again.

COURT:

That was the consensus.

ATTY. CALPITO:

Q

Madam Witness, you mentioned that the three left to haze (sic) the Masterline grocery and when they came back they said it is not yet possible. With respect to that plan what was the consensus or decision of the group then?

ATTY. STA. MARIA:

Objection, your Honor. Already answered.

COURT:

The objection is sustained not on that ground but on the ground that there is still no premise. You are referring to a consensus when there was still no evidence that a consensus was being set up. Lay the basis.

ATTY. CALPITO:

Q

Madam Witness, when the three persons arrived or came back and they said that it was not yet possible was there any reply from the group that was left?

A

None, sir.

Q

How about a decision or a consensus from the group was there any Madam Witness after they learned that it is not yet possible?

ATTY. DANCEL:

Objection, your Honor. Leading.

COURT:

Sustain (sic).

Q

What happened after the three allegedly reported back? .

A

When the three reported that it was not yet possible to stage such plan because there were many policemen, Maj. Comiling decided to forego

COURT:

Q

To forego what?

A

Not to stage the hold-up yet because there were many policemen.

ATTY. CALPITO:

Q

So what happened next Madam Witness after Comiling said that?

A

We just tarried along but they kept on planning.

Q

You said that they kept on planning how did you know that they kept on planning after that meeting in June 1995?

A

Because I was always with them whenever they talk with each other.

Q

You said that you were always with them whenever they plan. Are you telling the Honorable Court that it was not only once that they planned, Madam Witness?

A

Yes, sir. They planned several times.

COURT:

Q

What did they plan?

A

They kept on planning about the hold-up but it was not continued.

ATTY. CALPITO:

Q

How many times did this group plan in your presence?

A

Many times, sir.

Q

Could you please give your estimate?

A

Four times.

Q

If you said that they planned for four times when was the second time?

A

July, but I cannot remember the date.

COURT:

Q

What year?

A

1995, sir.

ATTY. CALPITO:

Q

Where was this that the group planned sometime in July 1995?

A

At the house of Lani Galingan at Iris, Tayug, Pangasinan.

Q

And who were present at that second meeting at the place of Lani Galingan?

A

Sonny Rimas, Eddie Calderon, Bong Clotario, Eddie Tangkad, Rey, Paul, Leo, Gil Salagubang, Maj. Comiling and Bong Galingan.

Q

You just mentioned several persons whom you claimed to be present at that second meeting at the house of Lani Galingan. Why do you know that they were the persons who were there, Madam Witness?

A

Because I was fetched by Bong Galingan and I overheard their plan to stage a hold-up at the Masterline.

Q

In short you are saying that you were there?

A

Yes, sir. I was there.

Q

And did the plan materialize at that time, Madam Witness?

A

No, sir.

Q

And what was the reason, Madam Witness, if you know?

A

Yes, sir.

Q

What was the reason?

A

Because there were many people at the Masterline grocery.

Q

And how did the group came (sic) to know that there were a lot of people at the Masterline grocery?

ATTY. STA. MARIA:

Incompetent, your Honor.

COURT:

If you know.

WITNESS:

A

Because that was being told after Comiling and Bong Galingan ordered somebody.

COURT:

Q

And who said that?

A

Eddie Calderon and Bong Clotario.

ATTY. CALPITO:

Q

If you said that the plan did not materialize at that second meeting when was the third meeting then, if you know?

A

August, sir. I cannot remember the date.

COURT:

Q

What year?

A

1995.

ATTY. CALPITO:

Q

Will it be first week, second week or third week or 4th week? I am referring to the third meeting.

A

First week, sir.

Q

And where was this meeting held?

A

At the house of Lani Galingan, sir.

Q

And who were the persons who were present at that time, Madam Witness?

A

The group of Maj. Comiling, sir.

ATTY. CALPITO:

Q

Please enumerate them.

A

Bong Galingan, Maj. Comiling, Sonny Rimas, Gil Salagubang, Eddie Calderon, Leo, Paul and Rey.

Q

And what was the result of this third meeting?

A

It did not materialize yet.

COURT:

Q

What did not materialize the meeting or what?

A

The meeting was held but the schedule of the hold-up did not materialize.

ATTY. CALPITO:

Q

And when was the fourth meeting, Madam Witness?

A

In the house of Lani Galingan.

Q

When?

A

I cannot remember the date.

Q

How about the month?

A

Last week of August, sir.

COURT:

Q

What year?

A

1995, sir.

ATTY. CALPITO:

Q

And how do you know that this 4th meeting was held on the last week of August 1995 at the house of Lani Galingan?

A

Because I was in the house of Lani Galingan, sir.

ATTY. CALPITO:

Q

Why? Do you usually reside there or not?

A

Bong Galingan made me resign at J-5 restaurant.

Q

When was that?

A

August 21, sir.

COURT:

Q

How far was this J-5 from Lani Galingan's place?

A

Not too far.

Q

In other words in response to the last question propounded by the private prosecutor you were not actually residing at Lani Galingan's place?

A

I was residing there at the time because Bong Galingan made me resign.

Q

You resigned from your job and your boyfriend lodged you at Lani Galingan's place. Is that what you are saying?

A

Yes, sir.

Q

Were you such a resident at Lani Galingan's place throughout the four alleged meetings that you testified on?

A

Yes, sir.

Q

From the first meeting to the fourth you were already residing or lodging at Lani Galingan's place?

A

No, sir.

Q

So when did you start residing at Lani's place?

A

August 21, 1995.

COURT:

Q

What makes you remember that?

A

Because that is when Bong Galingan lodged me.

xxx xxx xxx

Q

Madam Witness, you enumerated some names of persons whom you claimed to be present in the last week of August 21, 1995 at Lani Galingan's residence. Why do you know that these were the persons who were there at the time for the 4[th] meeting?

A

Because we usually went together.

Q

So that Madam Witness during that particular time of the 4th meeting where were you?

A

I was at the house of Lani Galingan.

ATTY. CALPITO:

Q

And what happened at that time Madam Witness?

A

They were talking about the supposed hold-up at the Masterline.

Q

And what else transpired, if any? I am referring to that 4[th] meeting?

A

They were talking about the subject matter Masterline grocery.

Q

What about the Masterline grocery?

A

Their staging of a hold-up.

Q

And what was the result of that 4[th] meeting?

A

It did not yet materialize.

Q

You mentioned a while ago that there were four meetings. You just mentioned now that in that 4th meeting it resulted into the plan not pushing through. Was there any other meeting, Madam Witness?

ATTY. STA. MARIA:

Objection, your Honor.

COURT:

Sustain (sic).

ATTY. CALPITO:

Q

That was in the last week of August 25, 1995. So what happened after that?

A

The staging of the hold-up pushed through.

Q

If you said that the plan of the hold-up of the Masterline grocery pushed through when was that Madam Witness?

A

September 2, 1995, sir.

COURT:

Q

What time?

A

At 4:00 they were still at the house. Maybe that was at 6:00.

Q

You mentioned 4:00 and 6:00, what was that?

A

In the afternoon, sir.

ATTY. CALPITO:

Q

You said that at around 4:00 in the afternoon of September 2, 1995 they were still there. Whom are you referring to as the persons still there?

A

Bong Galingan, Maj. Comiling, Sonny Rimas, Eddie Calderon, Bong Clotario, Joe, Gil Salagubang.

Q

And what were these people doing there? By the way Madam Witness, where is this place that you are referring to?

A

Lani Galingan's place.

Q

What were these people doing there at 4:00 in the afternoon?

A

They were just there waiting for the persons being sent by Maj. Comiling.

COURT:

Q

You have mentioned of four alleged meetings and you even enumerated names. Could you tell the Court if there was anybody who presided?

A

Bong Galingan and Comiling.

Q

How did you know that?

A

I have known that and he said that all the orders of Bong are being followed.

Q

The orders of who?

A

Bong, sir.

COURT:

Q

I am asking you who presided, if any?

A

Bong Galingan and Maj. Comiling.

Q

How did you know that?

A

Because all the orders of Maj. Comiling and Bong Galingan are being followed by their men.

ATTY. CALPITO:

Q

And what time did these people leave Lani Galingan's place?

A

4:00 o'clock.

Q

Where did they go?

A

They proceeded towards Masterline.

Q

How about you Madam Witness, what did you do?

A

I was just there at the house of Lani.

Q

So after they left at 4:00, what happened next? What happened next as far as you are concerned?

A

After some time there were shots at the town.

Q

Around what time would that be when you heard gunshots?

A

6:00 o'clock.

COURT:

Q

And where were you then at 6:00 o'clock?

A

I was at the house of Lani.

Q

Did you ever stay put at Lani's place at 6:00 o'clock?

A

No, sir.

ATTY. CALPITO:

Q

Did you personally see those people leave Lani's place before the gunshots? Before you heard the gunshots?

A

Yes, sir.

COURT:

Q

About how many minutes or hours passed from the time you allegedly saw the people leave Lani's place from the time you allegedly heard shots in town?

A

I heard the gun fire at 6:30.

Q

So are you saying that it was almost 2-1/2 hours?

A

Yes, sir.

ATTY. CALPITO:

Q

If you say Madam Witness that you saw them when they left Lani Galingan's house, did they take any ride with them or not?

ATTYS. DANCEL & STA. MARIA:

Leading.

COURT:

Answer.

WITNESS:

A

Yes, sir. There was.

ATTY. CALPITO:

Q

How many rides were there?

A

Three rides, sir.

Q

And what were these rides?

A

One owner-type and two tricycles.

COURT:

Q

Owner type plane or what?

A

Owner-type jeep.

ATTY. CALPITO:

Q

And who were the persons who rode on the owner-type jeep, if you know?

A

Bong Galingan, Leo, Paul and Rey.

Q

And you said that there were two tricycles who rode on the two tricycles?

A

Maj. Comiling and Joe.

COURT:

Q

One tricycle each you mean?

A

No, sir. The other tricycle were on board Sonny Rimas and Bong Clotario.

ATTY. CALPITO:

Q

If I will add the persons whom you named there were 8 whom you said boarded the three vehicles. Is that all, Madam Witness?

A

Eddie Calderon and Gil Salagubang.

Q

And how about them? Where did they ride?

A

Tricycle.[6]

Naty's tenacious insistence on the minute details of what happened suggested nothing else except that she was telling the truth. We do not doubt her credibility.

The time-tested rule is that, between the positive assertions of prosecution witnesses and the mere denials of the accused, the former undisputedly deserve more credence and are entitled to greater evidentiary value.[7]

Appellant Comiling likewise contends that Naty's testimony was inadmissible against him to prove conspiracy because of the *res inter alios acta* rule under Section 30, Rule 130 of the Rules of Court which provides:

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.

This rule prescribes that any declaration made by a conspirator relating to the conspiracy is admissible against him alone but not against his co-conspirators unless the conspiracy is first shown by other independent evidence.

According to Comiling, Naty's testimony showed that she was also a conspirator, thus, the existence of conspiracy must be shown by evidence other than Naty's admission. As there was no independent proof of

conspiracy except the testimony of Naty, the latter's testimony concerning appellant's participation in the conspiracy was inadmissible against him. This contention is misplaced. The *res inter alios acta* rule refers only to extrajudicial declarations or admissions and not to testimony given on the witness stand where the party adversely affected has the opportunity to cross-examine the declarant.[8] In the present case, Naty's admission implicating appellant Comiling was made in open court and therefore may be taken in evidence against him.

Lastly, Comiling asserts that he cannot be held liable for robbery as he was not physically present at the Masterline Grocery and had no ostensible participation therein. The contention is off-tangent. Although Comiling was never tagged as one of the three robbers who entered the store of Ysiong Chua nor the one who mauled the victim or who shot PO3 Erwil Pastor to death, his participation was his leadership in the conspiracy to commit robbery with homicide and his inducement to his cohorts to perpetrate the same. As held in *People vs. Assad*, [9] one who plans the commission of a crime is a principal by inducement. As testified to by Naty Panimbaan:

Q

And what happened to this fourth meeting, Madam Witness?

A

They talked about the projected robbery and Major Comiling decided that they will push through on September 2.

Q

What else happened during that fourth meeting?

A

Major Comiling gave their respective assignments.

Q

You said Major Comiling gave their respective assignments to the members of this group, what assignments if you know was given to Bong Galingan?

A

Bong Galingan should be in front of the LBC.

Q

How about Sonny Rimas?

COURT:

Your answer should be one at a time.

WITNESS:

A

Sonny Rimas and Bong Clotario should be at the tricycle.

ATTY. ESTRADA:

Q

What about Gil Salagubang?

A

Gil Salagubang and Eddie Calderon should be in front of the Masterline Grocery.

Q

What about Major Comiling?

A

Major Comiling should be posted at the back of the bakery including Joe.[10]

Naty's testimony showed that Comiling was determined to commit the crime as early as June 1995. The fact that the heist was finally executed only on September 2, 1995 indicated that Comiling had indomitably clung to his determination. Principalship by inducement (or by induction) presupposes that the offender himself is determined to commit the felony and must have persistently clung to his determination.[11] In all the meetings prior to the commission of the crime, Comiling was seen and heard presiding over and leading the group. He was even the one who assigned each of his men his specific role in the robbery. Then, in the house where the perpetrators regrouped after the commission of the crime, Comiling was handed the money and jewelry stolen from the grocery store. It was also Comiling who instructed Naty and Lani to hide in Makati after the incident. He paid for the monthly rental of the room where Naty and Lani stayed. All this can only prove that Comiling was the acknowledged leader of the group.

Moreover, another witness for the prosecution, Sonny Rimas, testified that while serving beer to the accused at Zariza Inn, he heard that Comiling was planning the robbery of Masterline. He even heard Comiling say, "We will enter the place of Isko," referring to Ysiong Chua's store. Indeed, appellant Comiling was the undisputable mastermind. The judgment of conviction of Emilio Comiling must therefore be affirmed.

For his part, appellant Galingan interposed the defense of alibi. He claimed that he was in the house of his uncle in Novaliches, Metro Manila when the incident happened on September 2, 1995. He was in Manila because his wife was scheduled to arrive from Hong Kong on September 4, 1995.

For the defense of alibi to prosper, the accused must show that he was in another place for such period of time that it was physically impossible for him to have been at the place where the crime was committed at the time of its commission.[12]

In this case, Galingan did not meet the settled requirements of time and place. He failed to prove that he was indeed in Novaliches at the time of the commission of the crime; his alleged presence therein was not established by a positive declaration from an independent witness. Likewise, the place where he claimed to be on the night of

the crime was not of such distance that it was impossible for him to be at the scene of the crime at the time of its commission considering that either place could be reached in just about four hours by land. The fact that he met his wife upon arrival on September 4, 1995 was likewise inconsequential as it was two days after September 2, 1995, the date material to this case. Alibi, in order to be given full faith and credit, must be clearly established and must not leave any room for doubt as to its plausibility and verity.[13]

It should also be noted that Rimas testified that, while he was standing near the door of Masterline Grocery at around 6:30 p.m. on September 2, 1995, he noticed the arrival of an owner-type jeep. Rimas positively identified appellant Galingan as the driver thereof.

Galingan's invocation of alibi should be disregarded not only because of its inherent weakness but also because of the circumstances pointing to its contrived nature and his positive identification by prosecution witness Rimas as one of those present during the Masterline Grocery robbery on September 2, 1995.

Appellant Galingan also impugns the credibility of prosecution witness Naty Panimbaan. He denies Naty's claim that they were lovers. He maintains that Naty was a woman of ill-repute whom he paid P700 everytime they had sex. Galingan insists that the only reason why Naty implicated him in the offense was because she wanted him to leave his wife which he did not want to do. Furthermore, according to Galingan, Naty was a drug user and this supposedly tainted her credibility.

These attacks on Naty's character and reputation are too flimsy and irrelevant to deserve serious consideration. The fact that a witness is a person of unchaste character or even a drug dependent does not per se affect her credibility. Character is frequently used to refer to one's reputation in the neighborhood. It means the estimate attached to the individual by the community and not the qualities of the individual as conceived by one person.[14] With respect to a witness in both criminal and civil cases, evidence of his character, in order to affect his credibility, must refer to his "general reputation for truth, honesty or integrity." [15] Thus, testimonies attacking the character of a witness for the purpose of impugning his credibility must relate and be confined to the general reputation which such witness has in the community or neighborhood where he lives or has lived. Personal opinions on the moral character of a witness, being usually too general, sweeping or subjective, are excluded.

Measured against the foregoing standard, appellant Galingan's testimony on the alleged bad character and unreliability as a witness of Naty Panimbaan deserves no merit. Other than his adverse testimony, Galingan never credibly established that Naty was reputed in the community or neighborhood to be a woman of loose morals or a drug user. Clearly, Galingan's testimony and evidence concerning Naty's character was based solely on his own self-serving claim or private opinion, and did not at all reflect the general reputation by which Naty was held by the community. We therefore remain convinced of Naty's credibility as a witness.

Besides, the credibility of a witness is left primarily to the judgment of the trial judge. Given the direct opportunity to observe the witness on the stand, the trial judge is in a vantage position to assess the witness' demeanor, conduct and attitude under grueling examination.[16]

In *People vs. De Guzman*, we held that:

In the resolution of the factual issues, the Court relies heavily on the trial court for its evaluation of the witnesses and their credibility. Having the opportunity to observe them on the stand, the trial judge is able to detect that sometimes thin line between fact and prevarication that will determine the guilt or innocence of the accused. That line may not be discernible from a mere reading of the impersonal record by the reviewing court. The record will not reveal those tell-tale signs that will affirm the truth or expose the contrivance, like the angry flush of an insisted assertion or the sudden pallor of a discovered lie or the tremulous mutter of a

reluctant answer or the forthright tone of a ready reply. The record will not show if the eyes have darted in evasion or looked down in confession or gazed steadily with a serenity that has nothing to distort or conceal. The record will not show if tears were shed in anger, or in shame, or in remembered pain, or in feigned innocence. Only the judge trying the case can see all these and on the basis of his observations arrive at an informed and reasoned verdict.[17] (*italics ours*)

Moreover, Galingan failed to substantiate his claim that Naty was driven by ill will or false motive in testifying against him. His vain attempt to portray Naty as a “woman scorned by her lover” certainly did not constitute sufficient reason for Naty to accuse him of a very serious crime where the possible penalty could either be death or life imprisonment. In fact, the trial court did not perceive such improper motivation on the part of Naty and the other prosecution witnesses as would make them falsely implicate appellants in the commission of the very serious crime. To us, the only plausible motivation for Naty was her honest desire to speak the truth.

Our established doctrine is that the witness’ testimony deserves full faith and credit where there exists no evidence to show any dubious reason or improper motive why he should testify falsely against the accused, or why he should implicate the accused in a serious offense.[18]

More importantly, PO3 Erwil Pastor identified Galingan as the robber who shot him. In the emergency room of the Eastern Pangasinan District Hospital, at around 7:00 p.m. on September 2, 1995, Pastor moaned “I might die. I might die.” in the presence of SPO1 Conrado Hidalgo and SPO4 Emilio Nagui. Hence, PO3 Pastor’s statements were taken down by SPO1 Hidalgo who assisted PO3 Pastor in affixing his thumbmark with his own blood:

Q Who shot you?

A Bong Galingan, x x x [19]

Under Rule 130, Section 37 of the Rules of Court, the declaration of a dying person with the consciousness of impending death may be received in any case wherein his death is the subject of inquiry, as evidence of the cause and the surrounding circumstances of such death. There are four requisites which must concur in order that a dying declaration may be admissible: (1) it must concern the crime and surrounding circumstances of the declarant’s death; (2) at the time it was made, the declarant was under the consciousness of an impending death; (3) the declarant was competent as a witness; and (4) the declaration is offered in any criminal case for homicide, murder or parricide in which the declarant was the victim.[20]

(1) The first requisite is present in the ante-mortem statements of deceased PO3 Pastor. Certainly, the narration made by Pastor at the hospital’s emergency room before SPO1 Hidalgo and SPO4 Nagui concerned the cause and surrounding circumstances of the declarant’s death. The two policemen heard from the declarant’s own lips his utterance of the name “Bong Galingan” as his assailant. This fact was even testified to by these policemen.

(2) The declarant, at the time he gave the dying declaration, was conscious of his impending death. PO3 Pastor knew at the time he was being questioned that his chances of recovery were nil. In fact, he uttered the words, “I might die. I might die.” to signify his perception that death was forthcoming.

(3) PO3 Pastor, at the time he uttered the dying declaration, was competent as a witness. This fact is too obvious to warrant further discussion.

(4) The dying declaration of PO3 Pastor was offered as evidence in a criminal case for robbery with homicide in which the declarant was the victim.

Indubitably, PO3 Pastor’s dying declaration is complete in the sense that it was a full expression of all that he wanted to say with regard to the circumstances of his death. An ante-mortem statement is evidence of the highest order.[21] It is doctrinal that, when a person is at the point of death, every motive of falsehood is silenced.[22]

The mind is induced by the strongest of reasons to speak the truth – the declarant’s impending meeting with his Creator.

Insofar as Ricky Mendoza is concerned, the evidence likewise confirms his responsibility for the offense. He was positively identified by prosecution witness Rimas as one of the men who alighted from the jeep, barged into the Masterline Grocery and shot his way out therefrom. Naty Panimbaan also positively confirmed his participation in the crime. More than that, as shown by the records, Mendoza flew the coop after he was arraigned and remains at large up to the present. Flight from justice is evidence of guilt.

The existence of conspiracy in this case cannot be doubted. The rule is, whenever homicide is committed as a consequence or on the occasion of a robbery, all those who take part as principals in the robbery will also be held guilty as principals of the special complex crime of robbery with homicide.[23]

While we are convinced that appellants are guilty beyond reasonable doubt of robbery with homicide, we cannot impose the penalty of death on them. Under Article 294 (1) of the Revised Penal Code,[24] the crime of robbery carries the penalty of reclusion perpetua to death. In imposing the death penalty, the trial court appreciated the aggravating circumstances of band, evident premeditation, craft and disguise against appellants. However, these circumstances were not specifically alleged in the information as required under Rule 110, Section 8 of the Revised Rules of Criminal Procedure. Hence, inasmuch as no aggravating and mitigating circumstances can be deemed to have attended the commission of the offense, the lower penalty of reclusion perpetua should be imposed on them.

On the award of damages, this Court modifies the amounts as well as the designations thereof. Thus, appellants Emilio Comiling, Geraldo Galingan alias “Bong” and accused Ricky Mendoza alias “Leo” must in solidum restore to Ysiong Chua his lost valuables, and if impossible to do so, must pay him as reparation the amount of P26,000, plus the P81,000 in cash he lost, as actual damages. They should also pay the heirs of PO3 Erwil Pastor P50,000 as civil indemnity for his death as this is in accord with prevailing jurisprudence.[25] In addition, the heirs of PO3 Pastor are entitled to P25,000 as temperate damages in lieu of actual damages, pursuant to the case of *People vs. Abrazaldo*. [26] However, we cannot award moral damages to the heirs of PO3 Pastor because of their failure to present any proof or testimony that they suffered anguish and distress as a result of his death.

WHEREFORE, the decision of the trial court is hereby **AFFIRMED** with **MODIFICATION**. Appellants Emilio Comiling, Geraldo Galingan and accused Ricky Mendoza are hereby found guilty of robbery with homicide and sentenced to suffer the penalty of reclusion perpetua.

They are also ordered to return to Ysiong Chua his lost valuables, and if this cannot be done, to pay him in solidum its value of P26,000 as reparation, plus P81,000 which was the amount of the cash stolen, as actual damages, and to pay the heirs of PO3 Erwil Pastor P50,000 as civil indemnity and P25,000 as temperate damages.

SO ORDERED.

Davide, Jr., C.J., Vitug, Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Carpio-Morales, Callejo, Sr., Azcuna, and Tinga, JJ., concur.

Puno, J., on leave.

Panganiban, J., on official leave.

[1] Penned by Judge Ulysses Raciles Butuyan, Rollo, pp. 40-95.

[2] Rollo, pp. 16-17.

- [3] TSN, December 13, 1996, pp. 10-34; January 31, 1997, pp. 3-18.
- [4] Rollo, p. 95.
- [5] Rollo, p. 219.
- [6] TSN, Dec. 13, 1996, pp. 9-28.
- [7] People vs. Monteron, 378 SCRA 340 [2002]; Tecson vs. Sandiganbayan, 318 SCRA 80 [1999].
- [8] People vs. Flores, 195 SCRA 295, [1991].
- [9] 55 Phil. 697.
- [10] TSN, Jan. 31, 1997, pp. 3-4, Records, pp. 216-217.
- [11] Regalado, Criminal Law Conspectus, 2000 ed., p. 109.
- [12] People vs. Azugue, 268 SCRA 711 [1997].
- [13] People vs. Sagario, 14 SCRA 468 [1965].
- [14] Francisco, Evidence, Vol. VII, 1990 ed., p. 743.
- [15] Rule 132, Section 11, Rules of Court.
- [16] People vs. Omar, 327 SCRA 221 [2000].
- [17] 188 SCRA 407 [1990]; underscoring supplied; see also People vs. Silvano, 378 SCRA 672 [2002], People vs. Estorco, 331 SCRA 38 [2000] and People vs. Cayabyab, 27 SCRA 387 [1997].
- [18] People vs. Lomerio, 326 SCRA 530 [2000]; People vs. Merino, 321 SCRA 199 [1999].
- [19] TSN, November 25, 1996, p. 49.
- [20] Moran, Comments on the Rules of Court, Vol. V, 1980 ed., p. 294.
- [21] People vs. Montilla, 211 SCRA 119 [1992].
- [22] Moran, op cit., note 18, p. 304.
- [23] People vs. Nunag, 196 SCRA 206 [1991].
- [24] As amended by Section 9 of RA 7659.
- [25] People vs. Delim, 396 SCRA 386 [2003].
- [26] People vs. Abrazaldo, 397 SCRA 137 [2003].

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.