

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. EFREN NIMO Y NODALO AND JESSIE NIPAS (AT LARGE), ACCUSED, EFREN NIMO Y NODALO, ACCUSED-APPELLANT.*G.R. No. 92533. October 05, 1993*

Ponente: ROMERO, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-92533/>**ROMERO, J.:**

For Priscilla de Jesus, the events of the morning of March 30, 1989 were as a nightmare from which she could not seem to wake up. A 45-year-old businesswoman from Cotabato City, Priscilla had been staying for more than two months as a guest in the residence of Daisy Ronquillo[1] in Calzada, Camalig, Albay, when at 6:00 o'clock in the morning of March 30, 1989, she was awakened by a short scream and a muffled sound, much like the opening of a bottle of wine.[2] She immediately got up from her bed and ran out of the room towards the adjacent kitchen. There, she saw her friend, Daisy Ronquillo, sprawled on the floor with blood oozing from her head.

Priscilla noticed two men, one holding a gun and the other, a knife. The man with a gun went to Daisy's room while the other went to her room. Priscilla tried to revive her friend, grabbing the nearest rag to staunch the flow of blood from Daisy's head. Her efforts proved futile. After a few seconds, the two men came back and the one with the gun, identified by Priscilla during the trial as Efren Nimo, poked it at her nape and demanded that she give them a gun. Priscilla replied that she did not know anything about a gun.

Hence, the two men searched the rooms once again. While they were busy looking for a gun, Priscilla stood up. As she was about to run to the half-open kitchen door to escape, the man holding the knife saw her. He tied both of her hands with an electric stove cord and gagged her mouth with a rag. He tried to drag her into the sala but failed to do so as Daisy's lifeless body was obstructing the way. The man with the knife then went back to her room and ransacked her cabinet.

With her left hand, Priscilla was able to loosen the cord tying her hands. She got up, ran out of the house toward the hedges and started screaming. The nearest neighbor, Elan, opened her window and so Priscilla ran to her and asked her to call the police.

Priscilla then asked Zoe Longasa, Daisy's cousin, to accompany her back to Daisy's house, all the while thinking that Daisy was still alive. However, when they saw her, Daisy's face was turning black. Seeing that nothing more could be done to help Daisy, they left and went to the house of Antonina Mape, an aunt of Daisy, whose house was across the road. There, they waited for the police who arrived twenty to thirty minutes later.

When the police asked Priscilla what happened, she told them that two men had been to Daisy's house and the latter had been shot. Priscilla also discovered that some of her belongings were missing: a diamond ring worth P20,000.00, three (3) wrist watches valued at P7,000.00; two (2) antique pendants worth P15,000.00, two (2) pairs of earrings worth P1,000.00, three (3) pieces of gold necklace worth P3,000.00, one (1) ring and earring set worth P1,200.00, a bracelet worth P350.00, several small pendants and one white necklace.[3]

At just about the time when the incident occurred, Sunny Obligacion was grazing cows near the trail to the market in Calzada. He heard the gunshot from out of nowhere. Then he saw Jessie Nipas running towards the house of one Morco which was situated just in front of the house of Daisy. Seconds later, Sunny saw Priscilla coming from Daisy's house shouting for help. All this time, Sunny was just about forty meters away from Daisy's house. Soon thereafter, people began to converge outside Daisy's house.[4]

The gory crime generated wide publicity. A columnist in a national newspaper even severely criticized the government, specifically the police of Albay, for the occurrence of the felony. In due time, the matter was brought to the attention of President Corazon C. Aquino who forthwith directed the Director of the National Bureau of Investigation (NBI) to take a hand in the investigation of the crime.[5]

An NBI team composed of Attys. Arlis E. Vela and Romulo Asis was sent by NBI Director Antonio Carpio to Legazpi City to gather information about the incident. As a result of their investigation, the NBI agents were able to arrest Efren Nimo at the corner of Taft Avenue and EDSA in Pasay City on May 5, 1989. After a check with their records, the NBI agents also discovered that an outstanding warrant had been issued for Nimo's arrest in connection with another murder case. Hence, Nimo was detained for finger-printing and further investigation.[6]

Before interrogating Nimo, the NBI agents informed him of his constitutional rights, such as his right to remain silent, his right against self-incrimination and his right to counsel. He accepted the NBI's offer of the services of Atty. Jesus Delfin who happened to be at the NBI office at the time. Thus, the investigation, which was conducted in Tagalog, a dialect known to Nimo, culminated in the execution of Nimo's sworn statement, reproduced below, but only after Nimo had conferred with Atty. Delfin.[7]

06. T: Sumusumpa ka ba ng magsasabi ka ng buong katotohanan at pawang katotohanan sa pagsisiyasat na ito?

S: Opo.

07. T: Sabihin mo ang iyong buong pangalan at iba pang mga bagay na nauukol sa iyong pagkatao?

S: Ako po ay si EFREN NIMO Y NODALO, 27 taong gulang, binata, ipinanganak noong Pebrero 13, 1962 sa Binanderahan, Camalig, Albay, dating Welder sa isang talyer at sa kasalukuyan ay naninirahan sa Sto. Niño, Pasay City.

08. T: Noong Marso 30, 1989 humigit kumulang sa alas 6:00 ng umaga natatandaan mo ba kung saan ka naroroon?

S: Nandoon ako sa isang bahay sa Kalsada St., Camalig.

09. T: Kaninong bahay iyon?

S: Hindi ko alam kung kaninong bahay iyon.

10. T: Bakit ka naroon sa bahay na iyon?

S: Kasi nga gusto kong kunin iyong baril ng babaing may-ari ng bahay na iyon.

11. T: Bakit mayroon bang baril ang babaing may-ari ng bahay na iyon?

S: Mayroon daw po. Nabalitaan namin na kung minsan nga daw kapag nag-aaway sila ng kanyang kasamahan na babai rin ay nagpapatutok raw.

12. T: May kasamahan ka sa bahay na iyon?

S: Opo. Kasama ko si JESSIE NIPAS.

13. T: Bakit gusto mong kunin ang baril ng may-ari ng bahay na iyon?

S: Marami kasing nagbabanta sa buhay ko kaya kailangan ko ang baril para protection ko.

14. T: Bakit mayroon bang nagbabanta sa buhay mo?

S: Kasi nga maraming krimin ang nangyayari sa amin sa Camalig na sa akin binibintang na ang totoo ay wala naman akong kinalaman.

15. T: Kayo ba ay nakapasok sa bahay ng babae na sinasabi mo?

S: Opo.

16. T: Maaari bang isalaysay mo kung paano kayo nakapasok sa bahay na iyon?

S: Binuksan ng babae ang pinto sa likod ng bahay nila, noong makita kami niya ay pumasok siya uli sa bahay at noong makita ko uli ay may hawak na ng kutsilyo. Pumasok kami sa loob ng bahay ay niyapos ang aking kasamahan na si JESSIE at nag-pangagaw sila sa kutsilyo. Natumba silang dalawa at napailalim si JESSIE. Noong ako ay lalapit tumayo siya at sinasalubong ako ngunit ang hawak kong baril ay pumutok at bumulagta siya. Tumuloy ako sa kuwarto at hinanap ko ang baril pero wala akong nakuhang baril. Hindi ko naman nabuksan ang lahat na cabinet kasi nga nagmamadali na ako kasi may tao na sa paligid. Habang ako ay naghahanap ng baril sa cabinet ay sa hindi ko inaasahan ay pumutok na naman ang hawak kong baril, kaya ako ay lumabas na at ako ay dumaan sa gilid ng bakod ni MORCO. Kinaumagahan ay pumunta ako rito sa Maynila.

17. T: Balak mo ba talagang patayin ang babaing iyon?

S: Wala talagang balak kaming patayin ang babaing iyon. Parang hindi ko na alam ang nangyari kung bakit pumutok at tinamaan ang babae.

18. T: Ano naman ang ginagawa ni JESSIE NIPAS habang ikaw ay naghahanap ng baril sa loob ng kuwarto?

S: Naghahanap din siya sa isang kuwarto.

19. T: Nag-usap pa ba kayo ni JESSIE habang naghahanap kayo ng baril sa mga kuwarto?

S: Hindi na po.

20. T: Noong ikaw ay lumabas sa bahay na iyon, kasama mo rin ba si JESSIE?

S: Hindi na kami nagkita mula noon. Nagkita na lang kami noong isang linggo sa may rotonda sa EDSA at Taft.

21. T: Ano naman ang nangyari kung mayroon man noong magkita kayo ni JESSIE sa EDSA noong nakaraang linggo?

S: Sandali lang po kaming nag-usap, tinanong ko lang kung saan siya nakatira rito.

22. T: Saan daw nakatira si JESSIE?

S: Sa Las Piñas daw sa bahay ng kapatid niyang si DALISAY.

23. T: Mayroon ka bang nakuhang pera o alahas sa bahay na inakyat ninyo doon sa Kalsada, Camalig noong a 30 ng Marso 1989?

S: Wala po akong nakuhang maski ano.

24. T: Si JESSIE NIPAS naman, may nakuha ba siyang baril or pera o alahas?

S: Hindi ko po alam. Pero noong tanungin ko siya noong magkita kami sa Rotonda sa EDSA sinabi niyang wala raw siyang nakuha maski ano.

25. T: Sino ang may-ari ng baril na ginamit mo noong pumasok kayo sa bahay na iyon?

S: Nabili ko lang iyan noong 1985 sa isang tao na nakilala ko lang sa pangalang "BOY." Hindi ko na siya nakita mula noon.

26. T: Saan ngayon ang baril na ginamit mo?

S: Ibinigay ko po sa mga NBI noong hapon ng Biyernes, Mayo 5, 1989.

27. T: Ikaw ba ay nagkaroon na ng kaso na kriminal?

S: Hindi pa po.

28. T: Sa record ng NBI may isang EFREN NIMO ang nakahabla sa Municipal Trial Court ng Camalig sa salang Murder, alam mo ba iyon?

S: Hindi ko po alam iyan. Hindi ako iyon.

29. T: Sa ngayon wala na akong itatanong sa iyo, mayroon ka pa bang gustong sasabihin sa pagtatanong na ito?

S: Wala na po.

- KATAPUSAN NG SALAYSAY -

(Lagda)

EFREN N. NIMO

(Nagsalaysay)

WITNESS:

(Lagda)

Atty. JESUS DELFIN

SUBSCRIBED AND SWORN to before me this 8th day of May, 1989, at NBI, NCR, Manila.

(Sgd.)

SALVADOR R. RANIN

Regional Director"

After Nimo's arrest, the gun, a .38 caliber "paltik" revolver was recovered by the NBI agents. Nimo himself had told them that it was in his friend's house in Sto. Niño, Pasay City where he was temporarily staying. Nimo then accompanied the NBI agents to the one-room abode of Neri Mendiola, a security guard. Upon arriving there, they were met by a woman who turned out to be Neri Mendiola's wife. After she told them that Neri Mendiola was still at work, the NBI agents told her that Nimo wanted to give them the gun. So, she allowed them to enter the house. When the NBI agents asked Nimo where he kept the gun, he pointed to a small traveling bag. Upon the agents request, Mrs. Mendiola got the bag and handed it to them.

They then asked Nimo to open the bag but it was locked. Nimo told them that he did not have a key to open the bag. Mrs. Mendiola suggested that since her husband had a key, they should all take the bag to Neri Mendiola at

his workplace. They went to Neri who gave them the key. When Mrs. Mendiola opened the bag, they found the gun inside.[8]

Consequently, on July 11, 1989, an information for robbery with homicide was filed against Nimo and Nipas before the Regional Trial Court at Legazpi City.[9] It reads:

"That on or about 6:00 o'clock in the morning of March 30, 1989, at Calzada St., Municipality of Camalig, Province of Albay, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with intent to gain and with violence and intimidation of persons, and without the consent of the owner, did then and there wilfully, unlawfully, and feloniously take and carry away the following articles, to wit:

1. Diamond ring - - - - - P 25,000.00
2. Ladies wrist watches - - - - - 7,000.00
3. Pendants (2 pcs.) - - - - - 15,000.00
4. Earrings (2 pairs) - - - - - 1,000.00
5. Gold necklaces (3 pcs.) - - - - - 3,000.00
6. Bracelet - - - - - 350.00
7. 1 set of ring and earrings - - - - - 1,200.00

valued in the amount of P52,550.00 pesos, owned and belonging to Priscilla de Jesus y Ortuoste, whose both hands were tied by the accused at the back and the only companion in the house of victim DAISY RONQUILLO, and, on the occasion of such robbery, with the use of a gun, and with intent to kill, said accused, did then and there wilfully, unlawfully and feloniously assault, attack, and shoot one DAISY RONQUILLO, inflicting upon her gun shot wound, resulting to the latter's death, to the damage and prejudice of her legal heirs and to the damage and prejudice of Priscilla de Jesus y Ortuoste in the amount of P52,550.00 pesos.

ACTS CONTRARY TO LAW."

Jessie Nipas evaded the law and has since remained at large. Thus, only Nimo was arraigned on August 3, 1989 where he pleaded not guilty to the offense charged.

After the prosecution had presented evidence proving the facts narrated above, Nimo presented evidence consisting mainly of denial and alibi.

Nimo testified that since birth until 1981, he has resided in Barangay Gapo in Camalig, Albay. From 1982 to 1986, he stayed with his cousin and worked as a room cleaner at the Sunny Hotel in Pasay City. When the hotel ceased operations in 1986, he was forced to work as a helper in a welding shop along Katipunan Road, Quezon City, staying all the time with his brother in Project 8, also in Quezon City.

His retrenchment from the welding shop on April 5, 1989 brought him back to Pasay City where he sold cigarettes and newspapers. This time, he stayed with his friend, Neri Mendiola, in Pasay City. From the time he left Albay in 1981, he had visited the place only twice – in December 1987 and November 1989.

According to Nimo, he was selling newspapers and cigarettes on May 5, 1989 when he was arrested by NBI operatives. He was brought to the NBI office in Manila where he was detained, physically maltreated and harassed by NBI agents. On May 8, 1989, at about 3:00 o'clock in the afternoon, he was taken from his cell inside the NBI building and brought to the office of Assistant Director Salvador Ranin. The latter told him that a lawyer

by the name of Atty. Jesus Delfin wanted to help him. Atty. Delfin told him to sign a previously prepared document, which turned out to be the sworn statement, Exh. A. Nimo claimed that he was not allowed to read the document and that he affixed his signature thereon after he was assured that no further harm would be inflicted on him.[10]

Jane Marcelo Nimo and Priscila Nimo, sister-in-law and mother, respectively, of Nimo, corroborated his alibi. They testified in substance that Nimo was not in Camalig, Albay on March 30, 1989 and that he has visited the place only twice between 1982 and 1989.[11]

After trial or on January 29, 1990, the lower court[12] rendered a decision finding Nimo guilty beyond reasonable doubt of the crime charged. The dispositive portion of the decision reads:

"WHEREFORE, in the highest interest of justice as the scales of justice tilt heavily in favor of the prosecution beyond any shadow of doubt, judgment is hereby rendered finding accused Efren Nimo y Nodalo of the crime of Robbery with Homicide, as charged and he is hereby sentenced to suffer the penalty of thirty (30) years of reclusion perpetua. He shall also indemnify the heirs of Daisy Ronquillo in the sum of thirty thousand (P30,000.00) pesos and return to Priscilla de Jesus y Ortuoste all the articles mentioned under item 1 to 7 of the information or, in case of the impossibility to do so, their equivalent values in the total aggregate sum of fifty two thousand, five hundred and fifty (P52,550.00) pesos all in Philippine currency - and to pay the costs.

Efren Nimo shall be given full credit for his detention pursuant to Art. 29 of the Revised Penal Code.

Exh. 'B,' the .38 caliber paltic, is ordered confiscated and forfeited in favor of the Government and immediately turned over, under receipt, to the Commanding Officer, Albay PC Command at Camp Bagong Ibalon, Legazpi City, for proper disposition in accordance with Art. 45 of the Revised Penal Code.

With respect to accused Jessie Nipas, send the records to the archive without prejudice to the revival of the case upon apprehension of said accused, for which purpose let an alias warrant for his arrest issue.

SO ORDERED."

Efren Nimo now comes to this Court on appeal contending that the trial court erred in: (a) finding that Exh. B, the .38 caliber "paltik" revolver, was his own and was the same gun used in killing Daisy Ronquillo, (b) finding that Priscilla de Jesus had positively identified him as the killer of Daisy Ronquillo, (c) admitting his extrajudicial confession which was taken by the NBI agents, and (d) convicting him although his guilt had not been proven beyond reasonable doubt.

Insofar as the .38 caliber "paltik" revolver is concerned, we find that indeed the trial court committed a reversible error in giving it weight in assessing the prosecution evidence. The gun had not been properly identified and documented. In fact, NBI agent Arlis E. Vela himself admitted in open court that the gun surrendered to them by the appellant on May 5, 1989, was never subjected to a ballistic examination.[13] Neither did Vela list down the serial number of the gun.[14] It should be noted, however, that presentation in evidence of the firearm used in killing Daisy Ronquillo is not indispensable to prove the appellant's guilt,[15] there being other proofs of his culpability.

Contrary to appellant's contention, he was positively identified by Priscilla de Jesus as one of the intruders who killed her friend. On the stand, Priscilla unflinchingly pointed to appellant as the killer of her friend, Daisy.[16]

Appellant, however, impugns such positive identification by referring to Priscilla's April 25, 1989 sworn statement before the NBI where she stated that she was "not sure" whether she could recognize the culprits. On cross-examination, Priscilla had testified:

"Q. Now, on that occasion, April 25, 1989 you stated before the NBI Investigator that you did not recognize

the men who barged into your house, am I correct?

A. I remember I told them I am not sure.

Q. In fact you are not sure about the identity of those persons because you said that one of them had a bonnet on his face?

A. I did not say that.

x x x x x x x x.

Q. Now, I am showing to you a xerox copy of the statement you gave before the NBI Office, NCR Manila, is this the xerox copy of that statement?

A. Yes, sir.

Q. Now, what made you say that when you were questioned, 'Q - Do you know those two guys x x x Do you know the reason why they killed Daisy Ronquillo?' your answer was 'No, sir', what made you say so?

A. The way I understand the question they were my acquaintance.

Q. And when the question was asked of you, 'can you recognize them if you could see them again?' and your answer was 'I am not sure.'

A. Yes, sir.

Q. What do you mean?

A. Because I was still recuperating from shock of the tragedy. The incident happened March 30, 1989 and I was investigated April 25, 1989, nearly three weeks.

Q. Now, when you were asked to identify who was the man who poked a gun at your nape you pointed to the accused Efren Nimo, am I correct?

A. Yes, sir.

Q. But you could not be sure that he was the one who poked that gun at you the morning of March 30, 1989?

A. I was not sure.

COURT

Q. Why are you sure now?

A I have fully recovered from the shock, sir."[17]

Far from demolishing the prosecution's evidence on the identification of the appellant, said testimony erased any lingering doubt that Priscilla had indeed positively identified him. Human memory may be temporarily paralyzed by a startling event, especially if the same involves a person close to the witness. Eventually, however, as the witness recovers from the trauma, memory regains its clarity. This explains the experience of Priscilla. Awakened rudely by a scream and the muffled gunshot, she rose to find her friend bloody and sprawled on the kitchen floor. When first confronted with the culprit at the NBI office, her memory balked, most probably from the effects of her horrifying experience. However, at the trial, composed as she had become, she unhesitatingly pinpointed Nimo as the killer of Daisy.

Faced with a direct accusation, however, appellant never even attempted to prove that Priscilla was motivated by ill-feelings as to falsely impute to him the commission of such a serious crime. There is also the established fact

that Priscilla, aside from a fleeting glance of the appellant, got a close look at him four times more during the incident. Worth quoting is the portion of her testimony wherein Priscilla showed how she remembered appellant:

"Q. Now, when you saw Efren Nimo on March 30, 1989 that was the only time you saw him?

A. Yes, sir.

Q. And the running of the events of that morning, March 30, 1989 was very fast, am I correct?

A. Yes, sir.

Q. And you find difficulty in identifying him because of the fast phase (sic)?

A. No, sir, because he kept coming back to me.

Q. How many times did Efren Nimo go back to you?

A. Four times. The longest was when he poked the gun at me.

Q. When he poked his gun he was behind you?

A. Yes, sir.

Q. Was that the fourth time?

A. The first time, sir.

Q. When was the second time he went back to you?

A. When he asked for the gun. He was asking for a gun and he was asking the same question.

Q. When he was asking that he was not in front of you?

A. At my side.

Q. You did not have any frontal view of the accused whom you said was asking for three times the gun from you?

A I had sir because he was staying in the sala."[18]

Testimony in print is no substitute for the actual proceedings in the trial court. Hence, time and again, this Court has ruled that appellate courts will not disturb the factual findings of the trial court with respect to the credibility of witnesses and their testimonies. Having the advantage of observing the demeanor of the witnesses as they testified, the trial court's findings command great respect and consideration by the appellate courts, especially if they are supported by the evidence on record.[19] In the absence of proof of misapprehension of facts, this Court can do no less than give weight to the trial court's stamp of credibility on Priscilla as a witness and on her testimony positively identifying appellant as the killer of Daisy Ronquillo. Such positive identification of Nimo as the culprit completely demolished his alibi.[20]

That the prosecution had only one eyewitness hardly affects its cause. There is no law which requires that the testimony of a single witness needs corroboration except when the law expressly mandates such corroboration. Witnesses are to be weighed, not numbered. If credible and positive, the testimony of a single witness is sufficient to convict.[21]

To bolster his allegation that his extrajudicial confession was inadmissible, appellant recited a litany of alleged acts of maltreatment from the NBI agents. As with the trial court, this Court cannot give credence to such allegation. For one thing, no medical certificate had been shown to prove that he did suffer inhuman treatment.

Nor was there any proof that he even initiated the filing of an administrative or criminal complaint against his alleged tormentors. Neither did appellant present any eyewitness to his torture. In short, his allegation, obviously self serving, hardly deserves consideration. It bears emphasis that a case is built, block by block, not out of unsubstantiated allegation but on what has been proved. Thus unsupported, appellant's allegation of maltreatment remains what it is, that is, a mere allegation, and nothing more.

Extrajudicial confessions, especially those which are adverse to the declarant's interests, are presumed voluntary, and in the absence of conclusive evidence showing that the declarant's consent in executing the same has been vitiated, such confession shall be upheld.[22] In the instant case, the allegation that the extrajudicial confession is inadmissible is belied by these facts: (1) appellant was assisted by counsel who later signed his sworn statement; and (2) before appellant made his extrajudicial confession, he was first asked if he was amenable to the services of counsel, which query he answered affirmatively.[23]

While we are morally convinced about the appellant's culpability, we are not in agreement with the trial court that he should be held liable for the special complex crime of robbery with homicide.

The original criminal design of a perpetrator of the special complex crime defined in Art. 294(1) of the Revised Penal Code must be robbery. The homicide is perpetrated with a view to the consummation of the robbery, whether by reason, or on the occasion of, the robbery.[24]

In the case at bar, the intent to rob had been proven, not only by the extrajudicial confession of appellant, but also by the testimony of Priscilla that the two intruders kept on asking her for the gun which they coveted. No such gun was taken from the house of Daisy Ronquillo, but Priscilla lost pieces of jewelry. On this point, however, we entertain serious doubts as to who took the jewelry.

However, the actual act of asportation by either or both of the accused has not been proven by the prosecution, the records not disclosing any evidence to this effect. Thus, in her detailed testimony, Priscilla never once mentioned that she actually saw either Nimo or Nipas or both of them carrying away anything from the house, much less her jewelry. What is clear from the records is that the intruders rummaged through the personal belongings of both the victim and Priscilla in their effort to find the gun which they believed was located somewhere in the house. It was not even shown that they were successful in their attempt.

What is very disturbing is the fact that after realizing that her friend was beyond revival, Priscilla left the victim's house and stayed at a neighbor's house for approximately thirty (30) minutes while she awaited the arrival of the police. During this period of time, a number of people had converged around the house of the victim.[25] It is, therefore, quite probable that any of these spectators could have taken advantage of the situation, entered the victim's house and appropriated for himself Priscilla's jewelry. That Nimo and Nipas did not take any jewelry from the victim's house is further shown by Nimo's sworn statement admitting the shooting of Daisy while vehemently denying having stolen anything from the house.

In *People v. Pacala*[26] wherein the accused were also charged with the special complex crime of robbery with homicide, the Court considered the following factors in determining the robbery aspect of the case: (1) that there were no eyewitnesses to the alleged robbery, and (2) that none of the things allegedly stolen was ever recovered. These considerations equally apply to the case at bar, since no one actually saw either Nimo or Nipas take jewelry from Priscilla's room; nor was even a piece of jewelry recovered from Nimo.

In view of the failure of the prosecution to prove beyond reasonable doubt the element of robbery in the charge, appellant must be held liable only for homicide. In the *Pacala* case aforecited, the Court said:

"It is well-settled that in order to sustain a conviction for robbery with homicide, it is necessary that the

robbery itself be proven as conclusively as any other essential element of the crime. In order for the crime of robbery with homicide to exist, it is necessary that it be clearly established that a robbery has actually taken place, and that, as a consequence or on the occasion of such robbery, a homicide be committed. Where the evidence does not conclusively prove the robbery, the killing of the victim would, therefore, be classified either as a simple homicide or murder, depending upon the absence or presence of any qualifying circumstance and not the complex offense of robbery with homicide.”[27]

As the killing was not qualified by any of the circumstances enumerated in Art. 248 of the Revised Penal Code which would classify the felonious act as murder, Nimo should be held responsible for homicide. The aggravating circumstance of dwelling which was proven at the trial to have attended the commission of the crime, should have been appreciated by the trial court as an aggravating circumstance. Since the homicide was attended by one aggravating circumstance, the imposable penalty should be the maximum period of reclusion temporal.[28]

There being no proof that appellant has been convicted of any of the crimes enumerated in Sec. 2 of the Indeterminate Sentence Law so as to disqualify him from the beneficial effects of the said law, Nimo should suffer the indeterminate sentence of ten (10) years and one (1) day of prision mayor maximum as minimum period to twenty (20) years of reclusion temporal maximum as maximum period. Conformably with recent jurisprudence, he shall indemnify the heirs of Daisy Ronquillo in the amount of fifty thousand (P50,000.00) pesos.

WHEREFORE, appellant Efren Nimo is hereby declared guilty of the crime of homicide under Art. 249 of the Revised Penal Code. He shall suffer the indeterminate sentence of ten (10) years and one (1) day of prision mayor maximum as the minimum period to twenty (20) years of reclusion temporal maximum as the maximum period, and indemnify the heirs of Daisy Ronquillo in the amount of fifty thousand pesos (P50,000.00). No costs.

SO ORDERED.

Feliciano, (Chairman), Bidin, Melo, and Vitug, JJ., concur.

[1] According to the defense counsel, Daisy Ronquillo was the sister of Sheila Ronquillo, ex-wife of Satur Ocampo (Rollo, p. 48).

[2] TSN, August 29, 1989, p. 18.

[3] Ibid, pp. 29-30.

[4] Ibid, pp. 6-13.

[5] TSN, August 31, 1989, pp. 26-27.

[6] Ibid, pp. 4 and 32.

[7] Exh. "A," Records, pp. 52-54.

[8] Ibid, pp. 21-24.

[9] Criminal Case No. 4675.

[10] TSN, January 4, 1990, pp. 2-6.

[11] TSN, October 6, 1989, pp. 14-22; October 9, 1989, pp. 7-8.

[12] Presided by Judge Gregorio A. Consulta.

[13] TSN, August 31, 1989, p. 26.

[14] Ibid.

[15] *People v. Araja*, L-24780, June 29, 1981, 105 SCRA 133, 147.

[16] TSN, August 29, 1989, pp. 23-24.

[17] Ibid, pp. 32-35.

[18] Ibid, pp. 41-42.

[19] *People v. Villanueva*, G.R. No. 77396, July 20, 1992, 211 SCRA 602.

[20] *People v. Bechayda*, G.R. No. 72001, August 7, 1992, 212 SCRA 336.

[21] *People v. Villalobos*, G.R. No. 71526, May 27, 1992, 209 SCRA 304, 315.

[22] *People v. Luvendino*, G.R. No. 69971, July 3, 1992, 211 SCRA 36.

[23] *People v. Quijano*, G.R. No. 84361, May 31, 1991, 197 SCRA 761.

[24] *People v. Ponciano*, G.R. No. 86453, December 5, 1991, 204 SCRA 627, 639 citing *People v. Manalang*, G.R. No. 67662, February 9, 1989, 172 SCRA 149.

[25] TSN, August 29, 1989, pp. 12-13, 28.

[26] L-26647, August 15, 1974, 58 SCRA 370.

[27] *Supra*, pp. 377-378 with the Court citing *U.S. v. Baguiao*, 4 Phil. 110 (1905); *U.S. v. Alasa-as*, 40 Phil. 878 (1920); *People v. Cha and Milagrosa*, 45 Phil. 137 (1923); *People v. Barruga*, 61 Phil. 318 (1935), and *People v. Labita*, 99 Phil. 1068. See: *People v. Badilla*, G.R. No. 69317, May 21, 1990, 185 SCRA 554, 569 citing *People v. Repuela*, G.R. No. 85178, March 15, 1990, 183 SCRA 244, 250.

[28] Arts. 248 & 64 (1), Revised Penal Code.

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