

SECOND DIVISION

[G.R. No. 165896, September 19, 2008]

**RUSTICO ABAY, JR. AND REYNALDO DARILAG, PETITIONERS,
VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.**

DECISION

QUISUMBING, J.:

This petition for review assails the Decision^[1] dated October 27, 2003 and the Resolution^[2] dated October 14, 2004 of the Court of Appeals in CA G.R. CR No. 25212. The Court of Appeals had affirmed the Decision^[3] of the Regional Trial Court (RTC) of San Pedro, Laguna, Branch 31, finding petitioners guilty of the crime of Highway Robbery in Criminal Case No. 9045-B.

The facts are as follows:

On January 13, 1995, an Information was filed charging Rustico Abay, Jr., Reynaldo Darilag, Ramoncito Aban, Ernesto Ricalde, Ramon Punzalan, Ariston Reyes, Isagani Espeleta, Cesar Camacho, Leonardo Perello and Danilo Pascual with the crime of Highway Robbery/Brigandage. Said information reads:

x x x x

That on or about 7:30 o'clock in the evening of February 17, 1994, at the South Luzon Expressway, Municipality of Biñan, Province of Laguna, and within the jurisdiction of this Honorable Court, accused Ramoncito Aban y Casiano, Ernesto Ricalde y Jovillano, Rustico Abay, Jr. y Serafico, Ramon Punzalan y Carpena, Reynaldo Darilag y Apolinario, Leonardo Perello y Esguerra and Danilo Pascual y Lagata, who are principals by direct participation, conspiring and confederating together with Ariston Reyes y Plaza, Isagani Espeleta y Arguelles and Cesar Camacho y Deolazo, who are principals by indispensable cooperation and mutually helping each other, form themselves as band of robbers and conveniently armed with handguns and deadly bladed weapons, and while on board a Kapalaran Bus Line with plate number DVT-527 bound for Sta. Cruz, Laguna and a semi stainless owner type jeep with plate number PJD-599 as backup vehicle, accused with the use of the aforesaid handguns and bladed weapons with intent to gain and taking the passengers of the bus by surprise, did then and there wilfully, unlawfully and feloniously divest and take away personalities of the passengers and/or occupants therein, among them were:

- a) Thelma Andrade y Lorenzana, P3,500.00 cash;
- b) Gloria Tolentino y Pamatmat, P30,000.00 cash, \$2,000.00 dollars and eyeglasses (Perare) worth P5,000.00;

- c) Lilian Ojeda y Canta, P120.00 cash;
- d) Paul Masilang y Reyes, assorted used clothes of undetermined amount;

and by reason or on occasion of the said robbery, accused shot passenger Rogelio Ronillo y Lumboy, inflicting upon him gunshot wounds on the neck, thus, accused performed all the acts of execution that would produce the crime of homicide, but nevertheless, did not produce by reason of causes independent of the will of the accused, that is by the timely medical assistance rendered to Rogelio Ronillo y Lumboy, and to his damage and prejudice and to the damages and prejudices of the following:

- a) Thelma Andrade y Lorenzana in the sum of P3,500.00;
- b) Gloria Tolentino y Pamatmat in the sum of P30,000.00;
- c) Lilian Ojeda y Canta in the sum of P120.00

That the commission of the offense was attended with the aggravating circumstances of nighttime, by a band and with the use of motor vehicle.

With the additional aggravating circumstance that accused Isagani Espeleta y Arguelles and Cesar Camacho y Deolazo, being prison guards, have taken advantage of their public position by bringing out prison inmates and equipped them with deadly weapons and were utilized in the commission of robbery:

With the further additional aggravating circumstance on the following accused/inmates, as follows:

- 1) Ramoncito Aban y Casiano with prison number 121577 as recidivist, having been convicted by final judgment on June 15, 1984 by the RTC, Branch VI, Malolos, Bulacan, in Criminal Case No. 3874-M for Robbery with Homicide;
- 2) Ariston Reyes y Plaza with prison number 115906-P, as recidivist, having been convicted by final judgment on March 11, 1982 by the CFI, Manila in Criminal Case No. 82-3001 for Robbery; having been convicted by final judgment on September 2, 1987 by the RTC Branch 94, Quezon City, in Criminal Case No. 37432 for Robbery; and for Reiteracion or habituality for having served sentence for Homicide, convicted on March 25, 1991 by the RTC, Branch 34, Quezon City;
- 3) Reynaldo Darilag y Apolinario with prison number 129552-P for reiteracion or habituality for having been previously punished for an offense of murder in Criminal Case No. 039 by the RTC, Branch 5, Tuguegarao, Cagayan and as a recidivist for having been previously convicted by final judgment on July 8, 1987 by the same Court in Criminal Case No. 040 for Robbery;
- 4) Rustico Abay, Jr. y Serafico with prison number

132566-P as a recidivist for having been previously convicted by final judgment on August 31, 1988 by the RTC, Branch 163 Manila, in Criminal Case No. 71060 for Theft;

- 5) Ramon Punzalan y Carpena with prison number 113605-P as recidivist for having been previously convicted by final judgment by the RTC, Branch 111, San Pablo City on the following dates, to wit:
January 8, 1981 in Criminal Case No. 2454-SP, for Robbery in Band;
December 8, 1981, in Criminal Case No. 2549 for Theft;
October 7, 1983 in Criminal Case No. 2550-SP for Carnapping; and
Having been previously convicted by final judgment by the City Court of San Pablo City on March 30, 1981 in Criminal Case No. 17738 for simple theft;
- 6) Ernesto Ricalde y Jovillano with prison number N92P-2735, as a recidivist for having been previously convicted by final judgment on August 2, 1992 by the RTC, Branch 54, Lucena City in Criminal Case No. 91-679 for simple theft.

CONTRARY TO LAW.^[4]

When arraigned, all the accused pleaded not guilty. However, upon motion filed by accused Ramoncito Aban, with the conformity of the public prosecutor and private complainants Thelma Andrade and Gloria Tolentino, he was allowed to withdraw his earlier plea of "not guilty". Thus, on September 11, 1997, Ramoncito Aban, with the assistance of his counsel, pleaded "guilty" to the crime of simple robbery and on even date, the trial court sentenced him. Meanwhile, trial proceeded with respect to the other accused.

The prosecution presented the following witnesses: Thelma Andrade, Gloria Tolentino and Ramoncito Aban.

Thelma Andrade, a conductress of the Kapalaran Bus Line, testified that in the evening of February 17, 1994, the bus she was on was held-up. She said that Ramoncito Aban took from her, at gunpoint, the fares she collected from the passengers of the bus. She also identified Rustico Abay, Jr. and Ernesto Ricalde as two of the other companions of Aban.^[5]

Gloria Tolentino, a passenger of the bus, testified that someone shouted "hold-up" and ordered them to bow their heads. She obeyed the order but once in a while she would raise her head. According to Tolentino, the man seated beside her, Ariston Reyes, took her money and pieces of jewelry and handed them over to Reynaldo Darilag. She also identified Rustico Abay, Jr. as one of the companions of the robbers.^[6]

Ramoncito Aban, the last witness, testified that on February 22, 1994, Camacho and Espeleta, who were both prison guards of the New Bilibid Prison (NBP), took him and his companions, Ricalde, Abay, Jr., Punzalan, Darilag, Reyes, Perello and

Pascual, on board the owner-type jeepney of Camacho to stage a hold-up. He said they held-up a Kapalaran bus and it was Punzalan and Darilag who took the money and other belongings of the passengers in the bus. He further testified that the February 22, 1994 hold-up was the fourth staged by their group. According to Aban, the other hold-ups were carried out on February 11, 13 and **17**, and all four hold-ups were staged by the same persons.^[7]

The defense, for its part, presented the testimony of petitioners Rustico Abay, Jr., and Reynaldo Darilag, the other co-accused, and Genaro Alberto.

All the accused denied participation in the robbery that happened on February 17, 1994. Abay, Jr., Darilag, Reyes and Ricalde, who were detention prisoners, testified that they were confined in the NBP at the time the incident happened.^[8] Pascual and Perello, both civilians, testified that they were at home then.^[9] Genaro Alberto, a prison guard at the Bureau of Corrections, testified that during the headcount of the inmates conducted at 5:00 p.m. and 8:00 p.m. on February 17, 1994, no inmate was found to be missing.^[10]

In a Decision dated November 29, 2000, the RTC of San Pedro, Laguna, Branch 31 found petitioners Abay, Jr. and Darilag, as well as the other accused guilty of the crime charged. The trial court decreed as follows:

WHEREFORE, this Court hereby renders judgment convicting accused Ernesto Ricalde y Jovillano, Rustico Abay, Jr. y Serafico, Ramon Punzalan y Carpena, Reynaldo Darilag y Apolicario, Ariston Reyes y Plaza, Isagani Espeleta y Arguelles, Cesar Camacho y Deolazo, Leonardo Perello y Esguerra and Danilo Pascual y Lagata of the crime of highway robbery/holdup attended by the aggravating circumstance of a band only and hereby sentences each of them:

- 1) to suffer an indeterminate penalty of imprisonment [of] ... twelve (12) years and one (1) day as minimum to thirteen (13) years, nine (9) months and eleven (11) days as maximum, both of reclusion temporal in its minimum period;
- 2) to indemnify Thelma Andrade, the amount of P3,500 and Gloria Tolentino, the amount of P30,000 and US\$2,000; and
- 3) to pay the costs.

SO ORDERED.^[11]

The Court of Appeals on appeal acquitted Espeleta, Camacho and Punzalan of the crime charged but affirmed the conviction of petitioners Abay, Jr. and Darilag, Ricalde and Reyes. The dispositive portion of the Decision dated October 27, 2003 states:

WHEREFORE, the assailed decision of the Regional Trial Court of San Pedro, Laguna, Branch 31, in Criminal Case No. 9045-B, is **REVERSED** and **SET ASIDE**, but only insofar as accused-appellants Isagani Espeleta, Cesar Camacho and Ramon Punzalan, are concerned, for insufficiency of evidence. Isagani Espeleta, Cesar Camacho and Ramon Punzalan are hereby **ACQUITTED**. Unless held for any other charge/charges their immediate release is hereby ordered.