

EN BANC

[G.R. No. 168173, December 24, 2008]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. FO1 FELIPE DELA CRUZ Y REYES, AUDI DONA Y BINAN, ALFREDO BARACAS Y CONCEPCION, EDUARDO PALACPAC Y ROSALES, BERNARDO RANARA Y MORATALLA, JOEMARI DE LOS REYES Y CONCEPCION, DOMINADOR RECEPCION Y PALASO, AND ROBERT ALFONSO Y MARTIZANO, ACCUSED-APPELLANTS.

DECISION

BRION, J.:

For our review on automatic appeal is the March 15, 2005 decision^[1] of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 00570 that fully affirmed the February 9, 2000 decision^[2] of the Regional Trial Court (RTC), Branch 219, Quezon City. The RTC decision found the accused-appellants Fire Officer 1 Felipe dela Cruz y Reyes (*FO1 dela Cruz*), Audie Dona y Binan (*Audie*), Alfredo Baracas y Concepcion (*Alfredo*), Eduardo Palacpac y Rosales (*Eduardo*), Bernardo Ranara y Moratalla (*Bernardo*), Joemari delos Reyes y Concepcion (*Joemari*), Dominador Recepcion y Palaso (*Dominador*), and Robert Alfonso y Martizano (*Robert*) guilty of the special complex crime of robbery with homicide and robbery in band. Accordingly, the RTC sentenced them to suffer the death penalty for robbery with homicide, and an indeterminate penalty of six (6) years *prision correccional*, as minimum, to ten (10) years of *prision mayor*, as maximum, for robbery in band.

BACKGROUND

The prosecution charged the appellants before the RTC with the special complex crime of robbery with homicide and robbery in band under two separate Informations which state:

Criminal Case No. Q-99-85787 (Robbery with Homicide).

That on or about 2:15 a.m. on July 28, 1999 in Quezon City, Philippines, and within the jurisdiction of this Honorable Court, the aforementioned accused, conspiring, confederating and mutually helping each other, did then and there willfully, unlawfully and feloniously, with intent of gain by means of force, violence and intimidation upon Joselito Herrera, Joel Dizon, Rosie Anonuevo, Kuraishi Macapundag and Edwin Gultiano Arcenas, Felipe dela Cruz and Nestor Mayagma, sales and security personnel of Seven-Eleven Convenience Store at Mindanao corner Tandang Sora Avenue, aimed their firearms at said victims and repeatedly firing the same, accused forcibly take and carry away the following described property:

Cash money amounting to	P1,600.00	belonging to 7-11 Convenience Store
2 cash registers valued at	P64,000.00	-do-
Cellphone cards	P60,000.00	-do-

to the damage and prejudice of said owners and that, by reason or on the occasion of said robbery, accused with treachery and use of superior force, nighttime, with the use of unlicensed firearms, shot and killed Seven Eleven Security Guard NESTOR MAYAGMA and PTV 4 ELMER DUQUE, who were likewise divested of a cal. 38 Squires revolver with SN-61900 (licensed to Leopard Integrated Services, Inc.) valued at P10,000.00 and wallet with money, respectively, to the damage and prejudice of said deceased's heirs in the said amount.

CONTRARY TO LAW.^[3]

Criminal Case No. Q-99-85788 (Robbery in Band)

That on or about 1:45 a.m. on July 28, 1999 in Quezon City, Philippines, and within the jurisdiction of this Honorable Court, the aforementioned accused, acting in concert, conspiring, confederating and mutually helping each other, did then and there willfully, unlawfully and feloniously, with intent of gain by means of threats, force, violence and intimidation upon Robert Laguna and Rommel Varron pump attendants of Petron Gas Station, Petron Plaza, Inc. owned by Frewinda Robosa located at Commonwealth Branch located at Commonwealth Branch, Old Balara, Quezon City, armed with unlicensed firearms, accused forcibly take, carry away and divested said establishment of cash money amounting to P8,055.00 and assorted Petron products valued at P7,000.00 to the damage and prejudice of said victim(s).

CONTRARY TO LAW.^[4]

The appellants were duly arraigned, pleading "not guilty" to the charges laid.

The prosecution presented the following witnesses in the joint trial that ensued: Joel Dizon (*Joel*); Joselito Herrera (*Joselito*); Florencio Cabalbag, Jr. (*Florencio*); Kuraishi Makapundag (*Kuraishi*); Allan Taparano (*Allan*); Conrado Marquez, Jr. (*Conrado*); Rosanna Quintos-Duque (*Rosanna*); Ruben Labjata^[5] (*Ruben*); Senior Police Officer 2 Bayani Gotera (*SPO2 Gotera*); Jesus Macalino (*Jesus*); Edwin Gultiano (*Edwin*); Rommel Varron (*Rommel*); Corazon Rodil Gloria (*Corazon*); and Police Inspector Rodrigo Salamat (*P/Insp. Salamat*).

The appellants, Jose Villanueva (*Jose*) and Fire Officer 2 Edgardo Sambo (*FO2 Sambo*) testified for the defense.

The RTC summarized the testimony of Joel as follows:

JOEL DIZON, 7-Eleven graveyard shift supervisor, narrated that while he was arranging the merchandise on the store gondola, he heard gunshots coming from the position of their security guard near the counter; that slowly, he crawled towards the door of the back room from where, when he looked back, he saw their guard, Nestor Mayagma, engage [*sic*] in a shoot-out with someone near the entrance door; that he heard about five (5) gunshots; that he went inside the back room followed by Joselito Herrera and then, through a passage, they ended up behind the Slurpee machine;^[6] that through a gap between the machines, he saw a man, JOEMARI DE LOS REYES, carrying a revolver just in front of the machine and dragging the delivery boy of the Smacker's Bakeshop; that Joemari de los Reyes then went to the counter and, together with another man, FO1 FELIPE DELA CRUZ, took Rose Añonuevo, their cashier, inside the back room;^[7] that the two asked her "*Nasaan and may hawak ng susi?*" (referring to the one who had the keys to the cash register); that when they could not find him, the two took the cash registers with them and left; that he saw six other persons who went out but was not able to recognize them as he saw their backs only; that thereafter, he heard two more gunshots; that later, when he saw the ABS-CBN people enter the store, he pushed the machine aside, came out, and saw Mayagma sprawled on the floor; that Rose Añonuevo was in the back room and was still in a state of shock; that thereafter, he called the head of their security and they checked the items; and that he noticed that the phone cards and the body sprays were missing.^[8] [*Italics and footnotes referring to the pertinent part of the records supplied*]

Joselito, the assistant lead clerk of the 7-Eleven Convenience Store, essentially corroborated Joel's testimony. He added that while peeping from the back of the Slurpee machine, he saw appellant Robert giving orders. Fearing for his safety, he (Joselito) bowed his head, turned his back and said a prayer. He and Joel came out from their hiding place when the media arrived ten (10) minutes after the robbery.^[9] He then saw the bloodied body of their security guard, Nestor Mayagma (*Nestor*), sprawled on the floor. He went back to the storeroom to calm himself. Afterwards, someone told him to bring Nestor to the hospital as he was still alive. He brought Nestor to the Lanting General Hospital where the latter soon after died.^[10]

Florencio, the security officer and general services supervisor of Phil-Seven Corporation, declared on the witness stand that after conducting an investigation, he found that the total items taken by the robbers amounted to P84,060.00.^[11]

The RTC summarized the testimony of Kuraishi as follows:

KURAIISHI MACAPUNDAG, a 29-year-old messenger of the Finance Department of PTV-4, recalled that on the early morning of July 28, 1999, he joined Elmer Duque in his car going home; that they stopped at 7-Eleven because Elmer wanted to buy "*pambaon*" for his children; that he got off the car first and when he entered the store, he noticed a hold-up in progress because there were persons lying face down on the floor;^[12] that he then came face to face with a person, BERNARDO RANARA, carrying a gun; that he walked around the store and then heard another

shot; that upon hearing the shot, he went out and saw Elmer Duque bloodied and motionless on the ground; that he got scared, ran away towards the direction of Tandang Sora, heard two more shots, and eventually hid behind the trees; that after two hours, he returned to 7-Eleven but the gunmen were no longer there; and that on his way home, he heard over the radio that Elmer Duque had passed away.^[13] [*Italics and footnotes referring to the pertinent part of the records supplied*]

Allan, a cook at King Dimsum (a restaurant adjacent to the 7-Eleven Convenience Store), narrated that at around 2:00 a.m. of July 28, 1999, while he and his three (3) co-workers were cleaning the restaurant, he heard several gunshots. When they went out, he saw Diosdado peeping through the glass panel of the 7-Eleven Convenience Store.^[14] Thereafter, Diosdado pulled out a gun and entered the 7-Eleven Convenience Store; once inside, he bent a little and fired a shot. He further testified that he saw a man wearing a violet t-shirt pointing a gun at the people inside the convenience store. Afterwards, Diosdado went out towards their direction. As a result, he and his three (3) companions ran towards the kitchen of King Dimsum.^[15]

From inside the kitchen, he saw Diosdado approach two (2) taxicabs parked in front of the King Dimsum, wake up the drivers, and hold them up. Diosdado then proceeded towards a passenger jeepney parked under a Sampaloc tree.^[16] Suddenly, a maroon car arrived and parked near the 7-Eleven Convenience Store. The car's passenger alighted first and went inside the store. When the car's driver alighted from the car, Diosdado pointed his gun at the driver who raised his hands. At that point, Diosdado shot him in the chest. Fearing for his life, he (Allan) ran towards the bakery beside the restaurant. He heard two (2) more gunshots but did not see who fired them.^[17]

Conrado, a tricycle driver plying the Paniqui, Tarlac highway, recalled that at around 5:00 a.m. of July 28, 1999, while he was waiting for passengers, a green jeepney stopped and eight (8) untidy men alighted. Four (4) of them boarded his tricycle, while the others boarded another tricycle.^[18] He recalled the faces of two of his passengers - Joemari, who paid the fare, and Diosdado.^[19] The men alighted at *Barangay Coral*, Ramos, Tarlac. Thereafter, he returned to the highway and continued to ply his route until 8:00 a.m. At around 12:00 a.m. of July 29, 1999, he returned to the highway and overheard a certain *Ate Fe* talking to about eight (8) persons the Caloocan Police was looking for. He approached *Ate Fe* and informed her that he knew something about these eight (8) men. *Ate Fe* relayed the information to another tricycle driver who, in turn, reported it to the police.^[20] Thereafter, the Paniqui police came and brought him to the police headquarters.^[21] He accompanied the police to the place where he brought his four (4) passengers. They subsequently returned to the police station where the police had a brief meeting before returning to where he had brought his passengers.^[22] He was subsequently brought to the Caloocan Police Station where he gave two (2) sworn statements. He also later identified Joemari at the police station in a police line-up of twelve (12) men.^[23]

Rosanna, widow of Elmer, testified that her husband received a monthly salary of P11,400.00 working as a cameraman for PTV-4; and that she incurred P138,070.00

as expenses for the funeral and burial of her husband.^[24]

The testimony of Ruben, the driver of the jeepney, appeared in the RTC's decision as follows:

RUBEN LABAJATA, a 29-year-old Waray jeepney driver plying the Monumento-Paco-Bulacan route and a resident of Taliptip, Bulacan, Bulacan, related that between 1:00 and 2:00 o'clock in the early morning of July 28, 1999, he parked his jeepney at the terminal in Dagohoy, Monumento, Kalookan City; that while he and his passengers were waiting, they suddenly heard shots coming from a nearby place; that he got scared so he decided to leave but the jeepney could not start immediately;^[25] that while he was trying to do it, [*sic*] somebody poked a gun at him and ordered all his passengers to get out; that two of the gunman's companions sat on his right side and one on his left side while the others boarded it from the rear; that while they were moving, he looked at them, through his rear view mirror, from time to time ("*nasusulyapan ko rin*"); that the person who sat on his left was ROBERT ALFONSO while the two who were on his right were EDUARDO PALACPAC and AUDIE DONA; that seated behind him on the left side were BERNARDO RANARA, DOMINADOR RECEPCION, and JOEMARI DE LOS REYES while on the right were ALFREDO BARACAS and DIOSDADO RECEPCION; that from the terminal, he was ordered to drive the jeepney until they reached a Petron gas station in Quezon City where they loaded fuel; that Robert Alfonso then alighted and asked the gasoline boy where the cashier was and then the others also alighted; and that when the others returned, he noticed that they were carrying fluid.^[26]

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[He] further narrated that from the gas station, they stopped by a 7-Eleven store; that the men alighted but two remained beside the jeep guarding him; that he noticed that there were two taxicabs parked then; that he then heard successive gunshots; and that the others rushed to the jeepney and he heard "*kalabugan*" with something like a heavy metal object "*na makalansing*" was being loaded.^[27]

x x x x

After the carnage at 7-Eleven, [He] added that he just drove as instructed until they reached the Balintawak area where he heard that they would be going to Paniqui, Tarlac, because one of them had relatives there; that on their way, he heard the gunmen hammering the heavy object; that before reaching another Petron gas station in Bocaue, Bulacan, he was asked to slow down and then the men threw something heavy there; that it was already dawn when they reached Tarlac and he sensed that he would be done away with when he heard the word "*tumba*"; that he pleaded for his life telling them that he had two children and his wife was on the family way; that he was able to convince them and his life was spared on condition that he would follow their instructions; that upon reaching an intersection in Paniqui, Tarlac, the