

## EN BANC

[ G.R. No. 138937, January 20, 2004 ]

**PEOPLE OF THE PHILIPPINES, APPELLEE, VS. ANTONIO ABES Y YAMBOT @ "TONY" (DECEASED), SALDO YBAÑEZ Y ACEBES, ROBERTO BONTO Y MENDOZA @ "BERT," RICARTE BUMAGAT Y ORDONA, RAUL YBAÑEZ Y ACEBES AND SIMEON SILVANO, JR., Y GUTIERREZ @ "JHUN," APPELLANTS.**

### DECISION

**QUISUMBING, J.:**

For automatic review is the decision<sup>[1]</sup> of the Regional Trial Court of Bacoor, Cavite, Branch 89, dated September 30, 1998, in Criminal Case No. B-94-293. Its *fallo* reads:

ACCORDINGLY, finding all the accused (ANTONIO ABES y YAMBOT @ TONY, SALDO YBAÑEZ y ACEBES, ROBERTO BONTO y MENDOZA @ BERT, RICARTE BUMAGAT y ORDONA, RAUL YBAÑEZ y ACEBES and SIMEON SILVANO, JR., y GUITERREZ @ JHUN) GUILTY beyond reasonable doubt for (sic) Robbery with Homicide, they are each hereby sentenced to die by lethal injection one year after this decision becomes final. They are hereby ordered, jointly and severally, to indemnify the private complainant the amounts of P320,300.00 as compensatory damages; P240,000.00 as loss of earning capacity of her husband; P50,000.00 as moral damages; P50,000.00 as exemplary damages and P50,000.00 as and for attorney's fees.

Let the entire records of this case be transmitted to the Supreme Court for automatic review.

SO ORDERED.<sup>[2]</sup>

The appellants in the present case were all long-time residents of the town of General Mariano Alvarez (GMA), Cavite. All had previously been employed in various capacities by the GMA Water District. Their alleged victims, the late Antonio Calaycay and his wife, Catalina Calaycay, were also residents of GMA and owners of a grocery and a retail store.

On July 11, 1994, the Office of the Provincial Prosecutor of Cavite charged the appellants with the special complex crime of robbery with homicide (*robo con homicidio*) allegedly committed as follows:

That on or about the 20<sup>th</sup> day of March 1994 at around 7:30 o'clock in the evening at Lot 3, Block 35, Carillo Teacher's Village, Municipality of Gen. Mariano Alvarez, Province of Cavite, Philippines and within the jurisdiction of this Honorable Court, the above-named accused,

conspiring, confederating and mutually helping and aiding one another, with intent to gain, by means of force, violence and intimidation, being then armed with a deadly weapon and an unlicensed firearm, taking advantage of their superior strength, and against the will and consent of the owners thereof, did, then and there, willfully, unlawfully and feloniously, take, steal, rob and carry away from Spouses Antonio Calaycay and Catalina Calaycay the following, to wit:

1. Cash money amounting to P90,000.00;
2. Wallet containing P1,000.00 cash money, a Far East Bank ATM card and a driver's license; and
3. Check Booklet of the Bank of the Philippine Islands,

and during the commission of the crime of Robbery and/or subsequent thereto and by reason or on the occasion thereof, the above-named accused, with intent to kill, being then armed with the aforementioned deadly weapon and unlicensed firearm and again conspiring, confederating and mutually helping and aiding one another, with treachery and evident premeditation and with abuse of superior strength, did then and there, wilfully, unlawfully and feloniously, stab and fire upon the person of Antonio Calaycay causing his subsequent death, and also shoot and fire upon the person of Catalina Calaycay hitting her in the abdomen, the above-named accused, having thus performed all the acts of execution which should have produced the crime of Murder as a consequence thereof but which nevertheless did not produce it by reason of causes independent of the will of the accused, that is, by reason of the timely and able medical attendance rendered to the said victim which prevented her death, to the damage and prejudice of said Catalina Calaycay and to the legal heirs of Antonio Calaycay.

CONTRARY TO LAW.<sup>[3]</sup>

When arraigned, all of the appellants pleaded not guilty. Thereafter, trial proceeded.

The prosecution's version of the incident established that:

The spouses Antonio and Catalina Calaycay owned and operated a grocery store at the public market of GMA, Cavite.<sup>[4]</sup> They also had a retail store at their residence at Block 3, Lot 35, Teacher's Village, GMA, which was directly managed by Antonio.<sup>[5]</sup>

At around 7:30 p.m. of Sunday, March 20, 1994, Antonio and Catalina were on their way home from their grocery store in the market aboard their jeep driven by Antonio.

When they reached home and were about to park their jeep, they noticed appellants Antonio Abes, Raul Ybañez, his brother Saldo Ybañez, and Roberto Bonto standing in front of their house, while appellants Simeon Silvano, Jr., and Ricarte Bumagat were at the corner of the street near their house.<sup>[6]</sup> The faces of the Ybañez brothers, Bumagat, Abes, and Bonto were familiar to Catalina because they were frequent

customers of their store. She also knew Silvano, Jr., for he was a former member of the police force of GMA.<sup>[7]</sup>

Before the Calaycay spouses could disembark from their jeep, Abes and Raul Ybañez approached her, while Saldo Ybañez and Bonto approached Antonio. All were carrying short firearms. Suddenly, Abes announced a hold-up and warned Catalina not to move. At the same time, he grabbed Catalina's bag, which contained the P90,000.00 sales for the day from their grocery and her wallet containing P1,000.00, her automated teller machine (ATM) card, a check booklet and her driver's license.<sup>[8]</sup> Catalina resisted and tried to hold on to her bag. Raul Ybañez pistol-whipped her while Abes fired at her three times at close range,<sup>[9]</sup> but only succeeded in grazing her. Antonio tried to come to her assistance, but was stabbed thrice by Saldo Ybañez and shot three times by Bonto.<sup>[10]</sup> After Abes grabbed possession of Catalina's bag, he passed it to Silvano, who then told his companions, "Hali kayo bilis, sunod kayo sa akin, doon tayo sa likod dadaan" (come quick, follow me, and let's pass at the back).<sup>[11]</sup> The incident was witnessed by prosecution witnesses Salvador Arcenal<sup>[12]</sup> and Catalino Mutya, Jr.<sup>[13]</sup>

Antonio was first brought by Catalina and responding neighbors to the Medicare Community Hospital in GMA, where he was pronounced dead on arrival. Hoping that her husband could still be revived, Catalina brought him to the De La Salle University Medical Center in Dasmariñas, Cavite. Efforts were made to revive Antonio, but in vain. The autopsy conducted later by the National Bureau of Investigation (NBI) showed that Antonio died of "Wounds, gunshot and stab, multiple."<sup>[14]</sup> Catalina was treated for hematoma and contusions of the right shoulder.

The incident was reported by Catalina to the NBI and, after an investigation, an NBI team composed of some twenty (20) agents and operatives accompanied Catalina to GMA. There all the appellants were apprehended.

At the trial, the appellants interposed the defense of denial and alibi.

Appellant Abes testified that at the time that the Calaycay spouses were held up, he was at his house at Area D, Lot 2, Block 22, Barangay Malia, GMA, Cavite, conversing with his neighbor, Godofredo Inciong. Abes said he never left his house.<sup>[15]</sup> This was corroborated by Inciong<sup>[16]</sup> and Laarni Abes,<sup>[17]</sup> appellant's daughter.

For his part, appellant Bonto declared that he was at his house at Lot 39, Block 17, Poblacion H, GMA, attending to the relatives, neighbors, and friends who came for the interment of his daughter, Ma. Lourdes Bonto-Egante, who died on March 14, 1994 and was buried on March 20, 1994.<sup>[18]</sup> He presented a neighbor, Herminio Vival, to support his alibi.<sup>[19]</sup> He also presented a written statement executed by at least fifteen (15) of his neighbors for the same purpose. Further, Bonto proffered in evidence a certification from the Barangay Captain of Poblacion, GMA, attesting to his good moral character.

Appellant Bumagat testified that at the time of the incident he was at his house in Lot 37, Block 3, Area D, GMA, together with his wife and children cooking food for supper.<sup>[20]</sup> This was corroborated by Mrs. Virginia Gabriel, a high school teacher,

who claimed that she was at the Bumagat residence from 6:00 to 8:30 p.m. of March 20, 1994, conversing with the Bumagats and she saw Ricarte Bumagat at his house the whole time, preparing the family's evening meal.<sup>[21]</sup> Mrs. Gabriel admitted that she and her husband were close friends of Bumagat.<sup>[22]</sup>

Appellant Simeon Silvano, Jr., and Saldo Ybañez both testified that they attended the burial of their co-appellant's deceased daughter, Maria Lourdes Bonto-Egante, who was buried at the GMA cemetery on March 20, 1994. After the interment, they proceeded to the house of Reynaldo Silvano, the brother of Simeon, to attend Reynaldo's birthday party. With them was Adelfa Silvano, Simeon's wife. They arrived at Reynaldo's party at around 6:40 p.m. and stayed until 7:40 p.m., after which they left for home.<sup>[23]</sup> Their attendance at Reynaldo's birthday fete was witnessed by appellant Simeon's sister, Zenaida Brion;<sup>[24]</sup> his neighbor, David Sebastian;<sup>[25]</sup> and his mother, Mrs. Caridad Silvano.<sup>[26]</sup>

Appellant Saldo Ybañez further testified that at the time of the alleged incident, he was already at home, having just arrived from Reynaldo Silvano's birthday party, which he attended with appellant Silvano, Jr.<sup>[27]</sup>

Appellant Raul Ybañez stated under oath that at the time of the occurrence complained of, he was at the house of his neighbor, Divina Inciong, at Lot 6, Block 7, Barangay Elises, GMA, watching TV. He was with his common-law wife, Josephine and their child.<sup>[28]</sup> Afterwards, he said he went home with his family and went to sleep. To buttress his alibi, he presented Divina Inciong to corroborate his statement.<sup>[29]</sup>

The defense presented its eyewitness, one Susan Purihin, who testified that she saw the incident. She said no one among the appellants had a hand in perpetrating the crime. The culprits, according to her, were one "Erning Taga" and his companions.<sup>[30]</sup>

The trial court disbelieved the defense, but found the prosecution's version credible. Accordingly, it convicted the appellants of robbery with homicide. In view of the imposition of the death penalty upon all the appellants, the records of the case were elevated to this Court for automatic review.

During the pendency of this automatic review, we were informed by Assistant Director Joselito A. Fajardo of the Bureau of Corrections that appellant Antonio Abes died at the National Bureau of Prisons Hospital on March 6, 2002.<sup>[31]</sup> The initial certificate of death presented showed that the death of Abes was due to undetermined causes.<sup>[32]</sup> But on July 15, 2003, the Court was informed by Assistant Director Reinerio F. Albano of the Bureau of Corrections that Abes died on March 6, 2002 due to "myocardial infarction, old and recent"<sup>[33]</sup> as indicated by the postmortem findings in the accompanying certificate of death.<sup>[34]</sup>

In our resolution of August 5, 2003, we dismissed the case as to appellant Antonio Abes y Yambot "by reason of his death."<sup>[35]</sup> Hence this review will focus now only on the remaining five appellants, namely: Saldo Ybañez, Roberto Bonto, Ricarte Bumagat, Raul Ybañez, and Simeon Silvano, Jr.

The records show that on August 29, 2000, Atty. Alfredo C. Medina manifested to us his wish to be relieved as counsel for appellant Simeon Silvano, Jr.<sup>[36]</sup> He was replaced by one Atty. Jose L. Sineneng, Jr., who entered his appearance for Silvano, Jr., on September 20, 2000. Atty. Sineneng also moved for an extension of thirty (30) days to file an appellant's brief for Silvano, Jr.<sup>[37]</sup> In our resolution of October 24, 2000, we granted Atty. Medina's prayer to be allowed to withdraw as counsel for Silvano, Jr., and granted the motion of Atty. Sineneng, Jr., for an extension of thirty (30) days or until October 25, 2000 to file an appellant's brief for Silvano, Jr.

On October 24, 2000, Atty. Sineneng filed a second motion for extension of time of fifteen (15) days to file appellant's brief, which we granted in our resolution of November 14, 2000 with warning that "this would definitely be the last extension to be given by the Court."

On November 13, 2000, Atty. Sineneng filed a "Final Motion for Extension of Time to File Appellant's Brief" for another thirty (30) days or until December 8, 2000, which we granted with final warning that no more extensions would be granted.

It then came to our notice that a copy of our resolution of July 9, 2002 addressed to "*Atty. Jose L. Saneneng*" was returned unserved, with the notation "moved out." In our resolution of September 24, 2002, we directed Atty. Luzviminda D. Puno, Clerk of Court of the Supreme Court, to verify from the Integrated Bar of the Philippines (IBP) the current address of *Atty. Jose L. Saneneng* and to resend the resolution of July 9, 2002 at such address. On November 25, 2002, the Court was informed by the IBP, through Atty. Jaime M. Vibar, the IBP National Secretary, that "*the name Atty. Jose L. Saneneng does not appear in the list of our members.*"

On January 14, 2003, we resolved to direct Atty. Jose L. Sineneng, Jr., to show cause why no disciplinary action should be taken against him for his failure to file an appellant's brief for Silvano, Jr., and to comply with the resolution requiring the filing of the brief. We also directed appellant Silvano, Jr., to inform us whether he was interested in securing the services of a new counsel or if he desired us to appoint a counsel for him. We likewise resolved to refer the letter of Atty. Vibar to the Bar Confidant for verification of the Bar membership of Atty. Jose L. Sineneng, Jr.

On February 24, 2003, we resolved that "the copy of the resolution of 10 December 2002 addressed to *Atty. Jose L. Saneneng*, counsel for appellant S. Silvano, Jr., Rm. 504 J & T Building, Magsaysay Blvd., Sta. Mesa, Manila" be deemed served and to require the Bar Confidant to submit a written report on "*Atty. Jose L. Saneneng's* membership in the Bar."

In her report dated March 3, 2003, Atty. Maria Cristina B. Layusa, the Bar Confidant, reported to us as follows:

Per verification, the name JOSE L. SANENENG does not appear in the Roll of Attorneys. What appears therein is the name JOSE L. SINENENG, JR. of Sta. Isabel, Malolos, Bulacan who was admitted in the Philippine Bar on April 27, 1989.<sup>[38]</sup>

On May 6, 2003, we again resolved to require Atty. Sineneng to show cause why no disciplinary action should be taken against him for failure to file appellant's brief for