

SECOND DIVISION

[G.R. No. 142855, March 17, 2004]

**PEOPLE OF THE PHILIPPINES, APPELLEE, VS. HENRY ALICNAS,
APPELLANT.**

D E C I S I O N

CALLEJO, SR., J.:

This is an appeal from the Decision^[1] of the Regional Trial Court of Baguio City, Branch 6, in Criminal Case No. 16110-R, convicting the appellant of robbery with homicide and sentencing him to suffer the penalty of *reclusion perpetua*.

The Case for the Prosecution

At about 10:00 a.m. on September 22, 1998, Hector Bautista and Rogelio Alsagar arrived in Baguio City on board a closed six-wheeler truck with Plate No. UDS 518, owned by their employer, the Manila Forwarders Corporation. They were tasked to deliver packages to consignees in Baguio City and outlying areas. Bautista was assigned to drive the truck and Alsagar was his helper. Alsagar had the total amount of P5,700 with him, P5,000 of which was placed in a bag for their expenses and allowances. The remaining P700, which was his personal money, was in his pocket. By 10:00 p.m., they had completed their deliveries and decided to sleep through the night in the parking area of the Mt. Crest Hotel, Legarda Road, Baguio City. Bautista parked the truck on the left side of the hotel facing the road. There were two other trucks parked nearby. Bautista dozed off in the driver's seat. Alsagar, who was seated on the passenger's seat on the right side of Bautista, also slept. The center light was on. The windows on both the driver and passenger's side were closed.

At about 5:00 a.m. the next day, Alsagar was awakened by someone knocking on the door of the right side of the truck. When he looked towards his right, he saw the appellant with a .38 caliber gun in his right hand. The appellant pointed it at Alsagar saying, "Hold-up *ito*. *Buksan ninyo ang pinto, kung hindi babarilin kayo namin*." Alsagar noticed that the appellant, who was wearing a black bonnet on his head which almost covered his thick eyebrows, had two companions. Fearing for his and Bautista's life, Alsagar opened the door of the truck at the right side. The appellant boarded the truck and ordered Alsagar to stand up. He then divested Alsagar of the P5,700.

Meanwhile, Alsagar noticed that the appellant's two companions, one of whom was also wearing a bonnet on his head, had opened the left door of the truck and was pulling the sleeve of Bautista's jacket. The latter resisted. Suddenly, Alsagar heard a gunshot and saw that Bautista was hit on the lower left armpit, already dead. The appellant and his two companions then fled from the scene.

Alsagar shouted for help. The caretaker of the parking lot rushed to the scene and, upon seeing the mortally wounded Bautista, contacted the police station and informed the authorities of the incident. SPO1 Romeo Agngaray, SPO2 Diosdado

Gustilo and SPO1 Martin Sagorsor responded to the call. Dr. Vladimir Villaseñor of the PNP Crime Laboratory (Cordillera Administrative Region) also arrived at the scene and, upon opening the door of the truck, saw Bautista slumped on the driver's seat. He also noticed that the clothes and tools were in disarray, apparently the contents of a bag. The lights in the truck were on.

SPO1 Gabriel Isiran also arrived to conduct his investigation of the incident. SPO1 Amadeo Garcia, who was assigned to the Criminal Actual Records and Information Section as a crime photographer, took photographs of the truck^[2] and of Bautista slumped on the driver's seat.^[3]

At the police station, Alsagar gave his statement to SPO1 Agngaray.^[4] Alsagar gave the physical description of the appellant to Baguio City Police Cartographer SPO Augusto Mendoza. Alsagar described the appellant as one with a sharp nose, fair complexion (mestizo), 5 feet and 3 or 4 inches tall, with dark eyebrows, and a "rugged body."

Based on the description of Alsagar, Mendoza made a cartographic sketch of the suspect.^[5] Upon being informed of her husband's death, Helen Bautista arrived in Baguio City and got in touch with the police investigators.

Medico-Legal Officer Vladimir Villaseñor performed an autopsy of the victim's body. He submitted Medico-Legal Report No. M-144-98 which contained the following post-mortem findings:

Body belongs to a fairly nourished, fairly developed male cadaver, in primary stage of flaccidity. With beginning post-mortem lividity at the dependent portions of the body. Conjunctivae, lips and nailbeds are pale.

Trunk:

Gunshot wound, point of entry, left anterior axillary region, measuring 0.8 x 0.8 cm., 18 cms. from the anterior midline, with a contusion collar measuring 0.2 cm. laterally, 0.1 cm. superiorly, inferiorly and medially, directed posteriorwards, slightly downwards and to the right, fracturing the 4th left thoracic rib, and the 5th right thoracic rib, lacerating the upper and middle lobe of the left lung, the lower lobe of the right lung, the pericardial sac and the ascending aorta, with a slug recovered embedded at the right costal region, just beneath the skin.

There are about 2,000 cc. of blood and blood clots accumulated in the thoracic cavity.

Stomach is full of dark reddish fluid. And the rest of the visceral organs are grossly unremarkable.

Cause of Death:

Hemorrhage as a result of gunshot wound of the trunk.^[6]

The doctor found contusion collar on the edges of the gunshot wound. He recovered a slug from the right side of the victim's chest, just beneath the skin. He then turned it over to Firearms Examiner Dalmacio Magantino. The doctor testified that the assailant was more than 24 meters away from Bautista. He also stated that it

was possible that Bautista was in a sitting position when he was shot and that considering the measurement of the gunshot wound, the slug came from a .38 caliber gun. The doctor signed Bautista's Certificate of Death.^[7]

On October 5, 1998, Firearms Examiner Magantino conducted a ballistic examination of the slug recovered from Bautista's cadaver and submitted Report No. BC-FAIS-33-98 where he stated that the slug was fired from a .38 caliber handgun.^[8]

On October 10, 1998, SPO2 Diosdado Gustilo informed SPO1 Agngaray that the appellant, who was one of those arrested for robbery by PO2 Domingo Batan of the Drug Enforcement Unit of the Baguio City Police Station, looked like the person in the cartographic sketch made by Augusto Mendoza. Agngaray informed Helen Bautista, the common-law wife of the victim, of the apprehension and summoned her to Baguio City. She then had Alsagar go up to Baguio City with her. From a police lineup of five persons in the Baguio City Jail, Alsagar pointed to and identified the appellant as the culprit.

A criminal complaint for robbery with homicide was filed with the Office of the City Prosecutor, Baguio City. The accused failed to file their counter-affidavits. On November 19, 1998, an Information was filed charging the appellant of robbery with homicide. The accusatory portion of the Information reads:

That on or about the 23rd day of September 1998, in the City of Baguio, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually aiding one another, with intent to gain, and being then armed with a gun, and by means of violence and intimidation, did then and there willfully, unlawfully and feloniously take, rob and carry away cash money amounting to P5,700.00 belonging to the employer of Rogelio Alsagar and Hector Bautista; that on the occasion and by reason of said robbery and for the purpose of enabling them to take, steal, rob and carry away the said amount of money, the above-named accused, did then and there willfully, unlawfully and feloniously and with intent to kill shot Hector Bautista resulting to the death of said Hector Bautista.

CONTRARY TO LAW.^[9]

The Case for the Appellant

The appellant denied any involvement in the charge. He testified that he was a resident of Ampucao, Itogon, Benguet, which was about 20 kilometers away from Baguio City. It would take one about 40 to 45 minutes to reach Baguio City from Ampucao on concrete roads.

During the school year 1998-1999, he was enrolled as a first year student at the Cordillera Career Development College at Buyagan, La Trinidad, Benguet. On Mondays, Wednesdays and Fridays, he left the house at 3:30 a.m. and would take a passenger jeepney bound for La Trinidad at Magsaysay Avenue. He would reach the school at around 7:00 a.m.

At times, the appellant slept in the house of his brother at Ambiong, La Trinidad, when it got late. From La Trinidad to Ambiong, he would go to Baguio City; from there, he would take a ride back to Ambiong.

At about 6:00 a.m. on September 23, 1998, the appellant boarded the passenger jeepney driven by Robert Taynan at the *rotonda* in Barangay Ampucao, Itogon. He was on his way to Baguio City. He attended his classes at the Cordillera College: Philippine History under Tecah Sagandoy at 7:30 a.m., and Sociology 101 under Geoffrey Kidlo at 8:30 a.m.

At 7:00 p.m. on October 10, 1998, the appellant and his friend, Frederick Baligan, went to the Carmel's Restaurant in Baguio City for a drink. They had just finished their exams and went out to relax after the grueling tests. When the appellant and his companion arrived, trouble ensued. The appellant was shocked when a waitress pointed to him as having created trouble earlier. He was identified as the one who mauled PO2 Domingo Batan of the Baguio City Police, and divested the latter of his .38 caliber gun with Serial No. K583530 with six live ammunitions in its chamber. The two were brought to the Burnham Park Police detachment where Agngaray mauled them. They were later brought to the Baguio City Police Station where they were fingerprinted. Thereafter, they were detained at the City Jail where PO2 Batan charged them with robbery (through violence) in the Office of the City Prosecutor, docketed as I.S. No. 98-5176.

In the evening of October 11, 1998, the appellant and three others were taken out of their cell and brought to the office of the jail guard where they were placed in a lineup. Of the five persons in the lineup, the appellant was the only one who was fair-skinned. Someone identified him as the one resembling the cartographic sketch of the suspect as drawn by Mendoza.

At about 5:00 to 5:30 a.m. on October 11, 1998, PO2 Batan and another policeman arrived in the house of Barangay Captain Eddie Amwasen of Barangay Ampucao, Itogon, Benguet, seeking help to recover his service firearm. PO2 Batan admitted to Amwasen that the appellant and Baligan were in jail but were not responsible for the loss of the firearm. Amwasen suggested that the policemen return in the afternoon. Amwasen then conducted an investigation and learned from the appellant's father and brother that it was a certain Baldo Doroteo who was the culprit. Amwasen then ordered Barangay Tanod Peter Besoy to recover the gun from Doroteo. Besoy succeeded and turned over the gun to Amwasen. The latter, in turn, returned the gun to PO2 Batan for which the latter issued a receipt.^[10] Batan then informed the investigating prosecutor in I.S. No. 98-5176 that he was withdrawing his complaint against the appellant and Baligan in view of the return of his gun. The investigating prosecutor granted the motion and recommended that the case be deemed withdrawn. The recommendation was approved by the City Prosecutor on October 20, 1998.^[11]

After trial, the court rendered judgment convicting the appellant of the crime charged. The decretal portion of the decision reads:

WHEREFORE, the Court finds the accused Henry Alicnas guilty beyond reasonable doubt of the offense of Robbery with Homicide as defined and penalized by Section 9 of Republic Act [No.] 7659 as charged in the Information in conspiracy with two others whose identities and whereabouts are yet unknown, and hereby sentences him to suffer the penalty of *reclusion perpetua*; to indemnify the heirs of the deceased Hector Bautista the sum of P50,000.00 as indemnity for his death; P152,150.00 as actual damages; and P2,184,000.00 as unearned

income; all indemnifications are without subsidiary imprisonment in case of insolvency, and to pay the proportionate costs.

The accused Henry Alicnas, being a detention prisoner, is entitled to be credited 4/5 of his preventive imprisonment in the service of his sentence in accordance with Article 29 of the Revised Penal Code.

SO ORDERED.^[12]

The appellant filed a motion for reconsideration of the decision, but the trial court denied the same.

The appellant now appeals the decision, contending that:

1. The trial court gravely erred in convicting accused-appellant of the crime despite the weakness and insufficiency of the prosecution evidence.
2. The trial court gravely erred in convicting accused-appellant despite the unreliability of the eyewitness' testimony on the identity of the accused.
3. The trial court gravely erred in convicting accused-appellant despite the fact that [the] eyewitness was obviously led by the police officers to pinpoint accused-appellant as the perpetrator and despite serious flaws in the manner by which accused-appellant was identified in the alleged lineup.^[13]

The appellant asserts that the court *a quo's* reliance on Alsagar's testimony in convicting him of the crime charged is misplaced. He contends that Alsagar's testimony is unreliable because it is debilitated by inconsistencies. On direct examination, Alsagar stated that the suspect was from 5'3" to 5'4" tall; however, on cross-examination, he stated that the suspect was from 5'4½" to 5'5" tall. Alsagar even told the police cartographer, Augusto Mendoza, that the suspect was 5'3" tall. The appellant avers that Alsagar's testimony, that the suspect was bearded when he staged the heist and the killing of Bautista, is inconsistent with what he told the cartographer, that the suspect was clean-shaven, as reflected in the cartographic sketch.^[14] How Alsagar identified the appellant in the police lineup was also highly irregular. Alsagar connived with the police investigators to pin criminal liability on the appellant for the crime charged. The appellant points out that the police investigators were so inept in their investigation that they even failed to have photographs taken of the scene of the crime, as well as to lift fingerprints on the driver and passenger's seats of the van.

The contention of the appellant is bereft of merit.

As gleaned from the decision of the trial court, it gave credence and full probative weight to the testimony of Alsagar, that the appellant was the one who robbed him of P5,700, and that he had two other co-conspirators, one of whom shot Bautista. The trial court declared that Alsagar gave a positive, straightforward and consistent account as to who perpetrated the crime charged, and how it was consummated by the appellant, in tandem with his co-conspirators. It took note of the inconsistencies perceived by the appellant on Alsagar's testimony as to the precise height of the appellant and considered them as minor and inconsequential. Thus:

After carefully considering the evidence, the court holds that accused Henry Alicnas is liable for Robbery with Homicide as having conspired and