

EN BANC

[G.R. No. 141644, May 27, 2004]

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. ROLANDO PINEDA Y MANALO, CELSO SISON Y LLOREN (AT LARGE), VICTOR EMMANUEL GONZALES COLET ALIAS "VICTOR COLET" (ACQUITTED), TOTIE JACOB ALIAS "TOTIE" (AT LARGE), JOHN DOE AND PETER DOE (AT LARGE), ACCUSED, ROLANDO PINEDA Y MANALO, APPELLANT.

DECISION

CARPIO, J.:

The Case

On automatic review is the Decision^[1] dated 21 January 2000 of the Regional Trial Court of Caloocan City, Branch 127, National Capital Judicial Region ("trial court") in Criminal Case No. C-53860 (98). The trial court found appellant Rolando Pineda ("appellant") guilty of robbery with homicide, attended by the aggravating circumstance of commission by a band. The trial court sentenced appellant to suffer the death penalty and to pay the legal heirs of the victim SPO1 Arnel Fuensalida ("Fuensalida") civil indemnity and damages.

The Charge

The Information^[2] charged appellant, along with Celso Sison y Lloren^[3] ("Sison"), Victor Emmanuel Colet ("Colet"), Totie Jacob ("Jacob"), John Doe and Peter Doe, with the crime of Highway Robbery resulting in Homicide, as follows:

That on or about the 15th day of October 1997, in Caloocan City, Metro Manila, the above-named accused, conspiring, confederating and helping each other, with intent to gain and posing as passengers of an AIRCONDITIONED BUS "DREAMLINE AIRCON BUS" then cruising along Quirino Highway, Malaria, Caloocan City with more or less sixty (60) passengers, said accused by means of violence and intimidation upon all passengers as well as the bus driver and conductor, did then and there willfully, unlawfully and feloniously stage a HOLD-UP by pulling out their respective firearms and poke the same against everybody especially against the bus driver and conductor and they started to take and rob cash and personal belongings of all and on the occasion of said robbery in order to instill more fear among passengers, said accused in pursuit of their conspiracy, did then and there willfully, unlawfully and feloniously with intent to kill shot in different parts of his body one SPO1 ARNEL FUENSALIDA Y INCINARES, PNP, who as a consequence of the wounds died shortly thereafter to the damage and prejudice of all passengers, bus driver, conductor and the family of deceased SPO1 Arnel Fuensalida y

Incinares.

CONTRARY TO LAW.^[4]

The police arrested appellant on 5 September 1998 and detained him on 8 September 1998 in the Caloocan City Jail for other criminal cases. The police arrested appellant for Criminal Case Nos. 54650 and 54651^[5] before Branch 131 of the Regional Trial Court of Caloocan City.^[6]

Arraignment and Plea

Appellant pleaded not guilty on his arraignment on 24 May 1999. After appellant had rested his case, the police arrested Colet. Colet pleaded not guilty during his arraignment on 27 September 1999. When the trial court rendered its decision, the other accused remained at large.

The Trial

The Version of the Prosecution

The prosecution presented six witnesses: (1) the victim's wife Amalia Fuensalida; (2) bus driver Camilo Ferrer ("Ferrer"); (3) conductor Jimmy Ramos ("Ramos"); (4) PO3 Napoleon Andaya; (5) PO3 Celerino Susano; and (6) Philippine National Police ("PNP") Medico Legal Officer Dr. Ma. Cristina Freyra.

The trial court summarized the prosecution's evidence thus:

At around 7:00 p.m. of 15 October 1997 while bus driver Camilo Ferrer (Ferrer for short) was driving his assigned passenger bus, the "Dreamline Aircon Bus" bearing Plate No. PWZ-208 with around fifty (50) passengers on board and heading for Tungko, San Jose del Monte, Bulacan, accused Rolando Pineda (Accused Pineda for short) and his five (5) companions boarded the bus along Quirino Highway near Lagro. Thence after the bus conductor Jimmy Ramos (Ramos for short) had collected the passenger's individual fares, he posted himself at the front door of the bus when suddenly accused Pineda who was seated behind Ramos rose from his seat, prompting Ramos to turn his head and look at Pineda. Forthwith the latter held driver Ferrer by the neck while poking a gun at his nape and shouted to his companion: "TOTIE, IKUHA MO AKO NG SAPATOS DIYAN PARA MAUMPISAHAN NA ANG LARO," and then announced a hold-up. While Ferrer was looking at accused Pineda through the rear-view mirror in front of the driver's seat, Pineda warned the former, "AYUSIN MO ANG PAGMAMANEHO KUNG AYAW MONG MAMATAY" with additional warning to maintain the same speed as the vehicles preceding them. Thence accused Pineda instructed his companions to close all the windows and bus curtains and commanded the passengers to bow down their heads. Irrked by Ferrer's act of stepping on the brake too often accused Pineda pressed the gun on his nape telling him "PUTANG INA MO KUNG GUSTO MONG MABUHAY AYUSIN MO ANG PAGMAMANEHO MO" and then followed by another instruction to his cohorts: "SAMSAMIN NINYO LAHAT ANG MASASAMSAM NINYO DIYAN" or words of similar import. At this juncture, Ramos, who was at a distance of one-half (1/2) meter from

accused Pineda was ordered by the latter to surrender to him his collections which out of fear he readily obeyed by handing over to Pineda the day's earnings of P5,700. It was at that point while Ramos was giving the money to Pineda when he took a glance at the left side of Pineda's face. Thence while his cohorts were divesting the passengers of their cash and valuables accused Pineda was continuously poking his gun at Ferrer's neck and would press it harder whenever he stepped on the brake. Thence after Ferrer was divested by the robbers of his wallet containing his driver's license and cash in the amount of P1,000 which incidentally he borrowed earlier from a loan shark in EDSA and while the bus was somewhere in Malaria, Caloocan City, a commotion ensued inside the bus when one passenger later identified as Victim SPO1 Arnel Fuensalida grappled with one of the hold-uppers for the possession of his clutch bag containing his service firearm. In the course thereof the concerned malefactor shouted: "BOSS INAGAW ANG BARIL KO" prompting accused Pineda to shout back "TIRAHIN NA, PATAYIN NA, PAG LUMABAN, PATAYIN NA." Immediately thereafter and while the bus was in Pangarap Village, Caloocan City, six (6) shots rang out. Apparently fearing that the gunfire would catch the attention of the highway patrol, accused Pineda commanded his cohorts to check through the window if any patrol car was following them and uttered: "HUWAG KAYONG MAGPAPAPUTOK." Not long afterwards accused Pineda remarked: "MALAPIT NA TAYO" and again ordered Ferrer: "DIRETSO MO LANG." As directed, Ferrer kept on driving until accused Pineda ordered him to stop the bus upon reaching Sampaguita Street, Caloocan City where all the malefactors alighted with their loot including victim Fuensalida's service firearm i.e. a caliber .38 Smith and Wesson revolver bearing Serial No. 47840. Thereafter the passengers started crying and some even lost consciousness. As suggested by one passenger, they all alighted at the Tungko Police Station, San Jose del Monte, Bulacan where a lady passenger screamed: "PATAY NA, PATAY NA," referring to the victim whose body was lying face down on the bus flooring. However for lack of jurisdiction the police officers thereat referred Ferrer, Ramos and the crying lady to Malaria Police Station, Caloocan City. The police officers after looking at the victim's cadaver and conducting an initial investigation referred them to the Urduja Police Station. At the Urduja Police Station, police investigators PO3 Celerino Susano and SPO1 Ernesto Mandanas of the Investigation Section were dispatched to Malaria, Caloocan City where subject bus bearing Plate No. PWZ-208 and body no. 2657 was found parked in front of the Kababayan Center. An ocular inspection of the bus disclosed the lifeless body of victim lying facedown on the flooring. Recovered inside the bus were two (2) slugs (Exhs. "I" and "I-1") and two (2) empty shells (Exhs. "J" and "J-1"). Thereafter the body was brought to El Ruaro Funeral Parlor where the same was subsequently identified by victim's widow Mrs. Amalia Fuensalida. Meanwhile the police investigators took down on the same day the sworn statements of Ferrer (Exh. "E") and Ramos ("Exh. "H" with submarkings "H-1" and "H-2") as well as that of the private complainant Amalia Fuensalida (Private Complainant for short) (Exh. "B" with submarking "B-1").

It came to pass that P/Supt. Benjamin Cabiltes, Chief of Urduja Police

Sub-Station 4, Camarin Road, Caloocan City assigned the team of SPO1 Carlito Alas, PO3 Napoleon Andaya, Sgt. De Guzman and other operatives of the Special Operations Group to conduct follow-up investigation of the case. Initially the team repaired to the police station in San Jose del Monte, Bulacan where the bus was first brought and based from [sic] information furnished by an unidentified bus passenger to the effect that the robber called for one "Totie" in the course of the robbery, an inquiry was accordingly made as to whether they know persons by that name to which the San Jose del Monte police identified the man as Totie Jacob, a member of the gang of accused Rolando Pineda who with another companion named Celso Sison was said to be detained at the Municipal Jail of San Jose del Monte, Bulacan for another case of robbery. Proceeding to the said place the team found out that the duo were already out on bail. Thence, after the pictures of accused Pineda (Exh. "B") and Sison (Exh. "C") from the file of said Municipal Jail were shown by the Team to Ferrer, the latter positively identified the duo as two of the six (6) malefactors involved in the robbery with homicide in question (Karagdagang Salaysay dated 6 Nov. 1997 – Exh. "E-1").

With the above findings together with the sworn statements of witnesses and the Joint Affidavits of SPO1 Carlito Alas and PO3 Napoleon Andaya (Exh. "D" with submarkings "D-1" and "D-2"), as well as Affidavit of PO3 Celerino Susano (Exh. "F" with submarkings "F-1" and "F-2"), and other pertinent documents such as the Death Certificate of victim (Exh. "P" with submarkings "P-1" and "P-2"), the case against accused Rolando Pineda, Celso Sison, Victor Colet, Totie Jacob, and two "Does," "John" and "Peter," were referred to the Office of the City Prosecutor, Caloocan City for appropriate action by P/Supt. Cabiltes per referral slip dated 10 November 1997 (Exh. "G" with submarking "G-1") which resulted in the filing of instant charge against the aforementioned accused after a preliminary investigation conducted by Asst. City Prosecutor Sancho G. Lomadilla.

Per the record, the cadaver of the victim was autopsied on 16 October 1997 by Medico Legal Officer Dr. Ma. Cristina Freyra of the PNP Crime Laboratory Services, EDSA, Kamuning, Quezon City, per Request for Laboratory Examination of the Caloocan City Police Station (Exh. "K") and the Certification of Identification and Consent for Autopsy (Exh. "L") signed by the Private Complainant. Dr. Freyra's findings was [sic] embodied in her Medico Legal Report No. M-1509-97 (Exh. "M" with submarkings "M-1," "M-2" and "M-3") with its annexes, i.e. sketches of Human Head and Body (Exh. "N" with submarkings "N-1" to "N-4" and Exh. "O" with submarkings "O-1" and "O-2," respectively), which disclosed the following findings and conclusion:

"FINDINGS:

Fairly nourished, fairly developed, male cadaver in rigor mortis with post mortem lividity at the dependent portions of the body. The conjunctiva are pale. The lips and nailbeds are cyanotic.

"HEAD, TRUNK, EXTREMITY:

- (1) Gunshot wound, left parietal region, measuring 0.8 x 0.7 cm just left of the midsagittal line, 167.5 cm from the heel, with an abraded collar measuring 0.1 cm uniformly, directed posteriorwards, downwards and medialwards, fracturing the left parietal and left sphenoid bone, lacerating both left cerebral hemisphere, with subdural and subarachnoidal hemorrhages. A deformed slug recovered embedded at the left sphenoid bone.
- (2) Gunshot wound, left post auricular region, measuring 0.8 x 0.7 cm, 11 cm from the posterior midline, 156.5 cm from the heel, with an abraded collar measuring 0.1 cm uniformly, directed anteriorwards, downwards and medialwards, fracturing left temporal and left sphenoid bone, lacerating the left cerebral hemisphere, with subdural and subarachnoidal hemorrhages. A deformed slug recovered embedded at the left sphenoid bone.
- (3) Contusion, left supraorbital region, measuring 4 x 3 cm, 4 cm from the anterior midline.
- (4) Abrasion, right cheek, measuring 8 x 3 cm, 9 cm from the anterior midline.
- (5) Gunshot wound, thru and thru, point of entry, right submanibular region measuring 0.8 x 0.7 cm, 7 cm from the anterior midline, 146 cm from the heel, with an abraded collar, measuring 0.1 cm uniformly, an area of smudging measuring 4.5 x 2, 2.5 cm, 146 cm from the heel, directed posteriorwards, upwards and to the left fracturing the left mandible, lacerating the larynx, making a point of exit at the left preauricular region, measuring 1.5 x 1 cm, 14 cm from the anterior midline, 154 cm from the heel.
- (6) Gunshot wound thru and thru, point of entry, epigastric region, measuring 0.8 x 0.7 cm, 2 cm left of the anterior midline, 115 cm from the heel with an abraded collar, measuring 0.1 cm uniformly, directed posteriorwards, downwards and lateralwards, passing thru the 4th left intercostal space, lacerating the left dome of the diaphragm, stomach and the spleen, making a point of exit at the left posterior costal region, measuring 1.5 x 1.2 cm, 10 cm from the posterior midline, 109 cm from the heel.
- (7) Gunshot wound, thru and thru, point of entry, vertebral region, measuring 0.8 x 0.7 cm, just left of the posterior midline, 122 cm from the heel, with an abraded collar, measuring 0.2 cm inferiorly, 0.1 cm superiorly, medially and laterally, directed anteriorwards, upwards and lateralwards, fracturing the 9th left thoracic rib, lacerating both lobes of the left lung, making a point of exit at the left anterior axillary region, measuring 1.5 x 1.2 cm, 14 cm from the anterior midline, 126 cm from the heel.
- (8) Gunshot wound, right shoulder, measuring 0.9 x 0.7 cm, 4 cm from the posterior midline, 144 cm from the heel, with an