

EN BANC

[G.R. No. 138388, March 19, 2002]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ANGELITO YATCO, ACCUSED-APPELLANT.**

DECISION

KAPUNAN, J.:

This is an automatic review of the Decision, dated November 23, 1998, of the Regional Trial Court, Branch 24, 4th Judicial Region, Biñan, Laguna, finding accused-appellant Angelito Yatco guilty beyond reasonable doubt of Robbery with Homicide and imposing upon him the supreme penalty of death.

The Information filed against accused-appellant charged him with robbery with homicide committed as follows:

That on or about January 6, 1994, in the Municipality of Sta. Rosa, Province of Laguna, Philippines and within the jurisdiction of this Honorable Court, accused Angelito Yatco, with intent to gain and without the knowledge and consent of the owner thereof, and by means of intimidation and violence upon person, did then and there willfully, unlawfully and feloniously take, steal and carry away cash in the amount of SEVEN THOUSAND THREE HUNDRED TWENTY PESOS AND THIRTY FIVE CENTAVOS (P7,320.35), Philippine Currency, belonging to San Miguel Corporation, to the damage and prejudice of the aforesaid owner in the aforementioned sum of P7,320.35, and in the process, with intent to kill, being then conveniently armed with a short firearm and without any justifiable cause, did then and there willfully, unlawfully and feloniously attack, assault and shot one Enrico Rivera y Yalong with the said firearm, thereby inflicting upon him gunshot wound on the vital parts of his body which directly caused his instantaneous death, to the damage and prejudice of his surviving heirs.

CONTRARY TO LAW.^[1]

On arraignment, accused-appellant, assisted by his counsel, pleaded not guilty. Trial ensued.

As culled from the decision of the trial court, the uncontroverted facts are:

Enrico Rivera y Yalong ("Enrico" for short), was a driver/helper of the San Miguel Corporation in its Canlubang Sales Office in Laguna. He also doubled up as a salesman in the delivery truck, whenever the regular one was not around.

At about 3:20 o'clock in the afternoon of January 6, 1994, Enrico, while

performing the dual role of driver and substitute salesman and in the company of truck helpers Mario Cena and Eduardo Bicanan in the delivery of beer at the Perez Merchandizing Store in Tagapo, Santa Rosa, Laguna, was shot with a gun and his sales collection of P7,320.35 was taken by his assailant (t.s.n. July 28, 1994, p. 41).

Enrico did not survive the attack. He was declared dead on arrival at the Biñan Doctor's Hospital (Exh. A). Dr. Rolando Poblete, the Municipal Health Officer of Sta. Rosa, conducted the autopsy on Enrico's body. In his Necropsy Report (Exhs. H and H-1) Dr. Poblete submitted the following findings:

"General Survey:

This is the body of Enrico Ruivera (sic) y Yalong, 30 years old, male, Filipino, 168 cm. in length, approximately 180 lbs., in early rigor mortis.

Pertinent P.E. Findings:

Chest/Thorax-Gunshot Wound (point of entry), 0.8 cm at the level of left 4th intercostal space, anterior axillary line; Gunshot wound (point of exit) 1.0 cm., level of 7th rib, right posterior axillary line.

On opening up:

A Y-incision was done at the anterior chest wall exposing the heart and lungs. On inspection, the slug perforated the left lung at the level of 4th intercostal space, going slightly downward hitting the inferior aspect of the right ventricle, the slug made an exit wound on the 7th rib, right posterior axillary line. Clotted and unclotted blood found at the thoracic cavity was approximately 800 ml.

Other organs unremarkable.

CAUSE OF DEATH; CARDIO-RESPIRATORY ARREST 2 TO HYPOVELEMIC SHOCK DUE TO GUNSHOT WOUND TO THE VITAL ORGANS.^[2]

To establish the identity of the assailant of Enrico, the prosecution presented as witnesses Normelito Robes and Mario Cena.

Robes, a warehouse helper and a resident of Tagapo, Sta. Rosa, Laguna, testified that on January 6, 1994 at around 3:20 in the afternoon he was taking his snack (*merienda*) in a store in Brgy. Tagapo, Sta. Rosa, Laguna. There was a delivery truck of the San Miguel Corporation parked right across the street, about four (4) meters away from where Robes was. He saw the driver of the truck grappling with another man positioned outside the truck. According to Robes, the man outside the truck who grappled with the driver was accused-appellant.^[3]

Robes further narrated that accused-appellant was trying to wrest away something from the driver. When it appeared that accused-appellant could not get hold of the object because the driver pulled himself away from the window, accused-appellant shot him. Thereafter, accused-appellant took away the money that was in the hand of the driver, alighted from the truck and ran towards the direction of Biñan. Robes later learned that the victim's name was Enrico Rivera.^[4]

Mario Cena, a helper in the same delivery truck, narrated that he and another helper, Eduardo Bicanan, were unloading cases of beer from the middle part of the vehicle at the time when they heard what then sounded like a firecracker. Cena stated that he ignored the explosion at first until he saw a man with a gun. The man ran away while he was putting the money in his pocket. Cena immediately went to the driver's seat and saw the lifeless body of Enrico. Cena ran after the assailant but he could not catch up with him. Cena positively identified accused-appellant as the gunman.^[5]

The prosecution likewise presented other witnesses, namely, Myrna Rivera, Dr. Rolando Poblete and Eduardo Bicanan. Myrna, wife of the victim, testified on the expenses the family incurred as a result of her husband's untimely death.^[6] Dr. Rolando Poblete, Municipal Health Officer of Sta. Rosa, affirmed the findings contained in the Necropsy Report^[7] which he prepared in connection with Enrico's death.^[8] Eduardo Bicanan, the other helper in the same truck, substantially corroborated Cena's testimony. When he (Bicanan) went to the driver's seat, Enrico told him "*May tama ako.*" Unlike Cena, however, Bicanan did not see the assailant because he immediately ran away.^[9]

For his part, to exculpate himself, accused-appellant interposed alibi and denial. He averred that he was a traffic aide at Sta. Rosa, Laguna and assigned in Balibago. He has two children, Tani Kate and Michael. In the afternoon of January 6, 1994 he was at their rented house in Tagapo, Sta. Rosa, Laguna. At about 3:00 to 4:00 in the afternoon, he left the house to fetch his daughter Tani Kate at the Sta. Rosa Elementary School, Tagapo, Sta. Rosa, Laguna. Upon their return to the house at 5:00 in the afternoon, accused-appellant prepared their supper.^[10]

Accused-appellant stated that he was invited for questioning at the police station on January 27, 1994. He claimed that there he was tortured by Major Rogelio de Castro of the Sta. Rosa Police Department and by CIS agents Malabanan, Macatangay and Legaspi. They then locked him up inside the prison cell. He begged them to allow his brothers and sisters to see him but his request fell on deaf ears. On January 31, 1994 he was transferred to Sta. Rosa, Laguna. He asked the Chief of Police to let him see a doctor. His request having been granted, accused-appellant was examined by Dr. Poblete on February 1, 1994.^[11]

Dr. Poblete confirmed on the witness stand that, upon the written request of the Chief Investigator,^[12] he examined accused-appellant on February 2, 1994 in his clinic in Sta. Rosa, Laguna. Accused-appellant then had multiple contusions on the different parts of his body like the chest, thorax, at the back of his left ear, lumbar area, and the head.^[13] A blunt object could have caused these contusions. When the patient was presented to him, the contusions were already healing. The wounds could have been inflicted not more than a week before the examination.^[14]

On rebuttal, the prosecution presented SPO2 Victor Torres of the 4th Regional Office, Camp Vicente Lim, Canlubang, Laguna. He testified that on January 26, 1994 he investigated accused-appellant at Camp Vicente Lim. He denied, however, that he and his fellow police officers tortured accused-appellant. He likewise denied that there was a Major Ramos in their group. He averred that it was Dr. Digna O. Ambas who examined accused-appellant on January 27, 1994 after the investigation. Thereafter the examination, they put accused-appellant behind bars.
[15]

SPO4 Rodolfo Macatangay stated that he was one of the police officers who investigated accused-appellant. The other police officers present during the investigation were Sgts. Legaspi, Malabanan, and Major Lachica. He denied that they tortured accused-appellant. Further, he said that their Intelligence Officer's name is Major Lachica and that there is no Major Ramos in their unit.
[16]

Delfin Santos, Composite Illustrator or Cartographer of the Criminal Investigation Group of Camp Crame, Quezon City, said that, upon the request of the police authorities, he prepared the cartographic sketch of accused-appellant based on the information given by Normelito Robes, the alleged eyewitness.
[17]

Dra. Digna Ambas testified that she physically examined accused-appellant on January 27, 1994. She said that his vital signs and all the body systems were essentially normal. There were no physical injuries noted.
[18]

On sur-rebuttal, the defense recalled accused-appellant on the witness stand. He testified that as a traffic aide he was under the supervision of SPO3 Lolit Cuyos. When he was arrested on January 26, 1994 he was then doing his job directing traffic. Sgt. Macatangay, Sgt. Legaspi, SPO2 Torres and Major Lachica apprehended him. They brought him to PNP Canlubang. There, he saw Myrna Rivera, the wife of the victim. Further, he also saw Delfin Santos, the cartographer. A woman photographer took accused-appellant's picture and his fingerprints were also taken. Dra. Digna Ambas examined him. After that he was brought to the office of the CIS where he was tortured.
[19]

After the prosecution and defense presented their respective evidence, the trial court rendered judgment finding accused-appellant guilty of robbery with homicide and sentencing him to death. The dispositive portion of the trial court's decision reads:

WHEREFORE, this Court finds accused Angelito Yatco guilty beyond reasonable doubt of the crime of Robbery with homicide as charged in the Information and hereby imposes upon him the DEATH PENALTY, and orders him to indemnify the heirs of Enrico Rivera y Yalong, as follows:

- a) the sum of P44,263.00 as funeral expenses;
- b) the sum of P50,000.00 as moral damages; and
- c) the sum of P7,680,000.00 as lost earning capacity of the said victim.

The accused is likewise ordered to indemnify the San Miguel Corporation of the sum of P7,320.35 representing the sales collection taken from said

victim.

No pronouncement as to cost.

SO ORDERED.^[20]

In view of the imposition of the death penalty, this case was automatically elevated to this Court for review. In his appeal brief, accused-appellant alleges that:

THE TRIAL COURT ERRED IN FINDING THE ACCUSED'S GUILT WAS PROVEN BEYOND REASONABLE DOUBT NOTWITHSTANDING THAT (a) THE PROSECUTION WITNESSES WERE BIASED AND PARTIAL AND THEIR TESTIMONIES WERE UNRELIABLE AND (b) THE TRIAL JUDGE WHO RENDERED THE DECISION WAS NOT ABLE TO FULLY APPRECIATE THE DEPORTMENT AND BIAS OF THE PROSECUTION WITNESSES BEING A MERE REPLACEMENT OF TWO (2) OTHER TRIAL JUDGES WHO INITIALLY HEARD THE CASE.^[21]

Accused-appellant primarily impugns the positive identification of him as the perpetrator of the crime by prosecution witnesses Robes and Cena. Accused-appellant specifically points to alleged inconsistent statements made by Robes in his affidavit and in his testimony in court. Robes allegedly claimed in the sworn statement that he was twelve (12) meters away from the truck at the time of the incident but in his testimony, he said that the distance was only four (4) meters. In his first sworn statement of January 26, 1994, Robes made no mention of accused-appellant's facial features and physical attributes but on the same day, the CIS cartographer was able to prepare a sketch of the assailant based allegedly on the description given by Robes. Accused-appellant likewise makes an issue of the fact that Robes did not report to the police immediately but waited until January 26, 1994, or twenty (20) days later, to tell the authorities about what he witnessed.

Contrary to accused-appellant's contention Robes described him as:

11. T:

Mailalarawan mo ba ang buo niyang hitsura o kaanyuan (ang salarin)?

S: Opo, siya po ay may taas na 5'3 hanggang 5'4, may edad na 40-45, maliit ang pangangatawan, may timbang na 110-115 lbs, kayumanggi ang kanyang kulay, manipis ang mukha, may bigote, manipis and labi, medyo bilugan ang mga mata, may katangusan ang iling, at bagsak ang buhok na medyo maigsi.^[22]

It was on the basis of this description and such other details that Robes gave the CIS cartographer, although not reflected in the sworn statement that accused-appellant's facial features were reproduced.

With respect to his positive identification by Cena, accused-appellant alleges that when Cena executed his affidavit on January 7, 1994, a day after the crime, he was unable to describe the features of the assailant. However, in his second sworn statement executed on January 27, 1994, Cena averred that he could identify the assailant if he saw him again. We are not persuaded. In his earlier sworn statement, unlike the second one, Cena was not specifically asked to describe