

## EN BANC

[ G.R. No. 136736, April 11, 2002 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JIMMY MARQUEZ Y BACAY, ACCUSED-APPELLANT.**

### DECISION

**MENDOZA, J.:**

This is is an automatic review of the decision,<sup>[1]</sup> dated October 26, 1998, of the Regional Trial Court, Fourth Judicial Region, Branch 32, San Pablo City, finding accused-appellant guilty of the complex crime of robbery with homicide and sentencing him to suffer the penalty of death and to pay damages to the heirs of the victim Pampilo Aclan.

Accused-appellant Jimmy Marquez, together with four John Does, was charged with Robbery with Homicide under Art. 294, par. 1, in an information docketed as Criminal Case No. 10069-SP, in which it was alleged —

That on or about September 22, 1995, in the City of San Pablo, Republic of the Philippines and within the jurisdiction of this Honorable Court, the accused above-named, with intent to gain, conspiring, confederating and mutually helping one another, did then and there willfully, unlawfully and feloniously take, steal and carry away jewelries worth P2.5 million and cash of P300,000.00, Philippine Currency, belonging to one PAMPILO ACLAN, and that in furtherance of and on the occasion of said robbery to accused the taking of said items, accused with intent to kill, did then and there willfully, unlawfully and feloniously attack, assault and [shoot] Pampilo Aclan with a gun, with which the accused were then conveniently provided, thereby inflicting mortal wounds upon said offended party which caused his immediate death.

CONTRARY TO LAW.<sup>[2]</sup>

Accused-appellant was likewise charged with violation of Presidential Decree No. 1866 (Illegal Possession of Firearm and Ammunition) under a separate information docketed as Criminal Case No. 10193-SP.

When arraigned on August 29, 1996, accused-appellant entered a plea of not guilty, whereupon a joint trial of the two cases was held.

The prosecution presented four witnesses: Rizza Cervantes and Jerwin Aclan, eyewitnesses; SPO2 Rolito Alinea, the investigating policeman; and Dr. Azucena I. Bandy, Assistant City Health Officer of San Pablo City, who prepared the Necropsy Report. Their testimonies are as follows:

The victim, Pampilo Aclan,<sup>[3]</sup> was a businessman engaged in the buying and selling of jewelry, for which he had a store in the market of San Pablo City. Before leaving for home at around 5:00 p.m. on September 22, 1995, Aclan placed the jewelry in two (2) boxes. Then, with his son Jerwin<sup>[4]</sup> and salesgirl Rizza Cervantes, he went home carrying the two boxes and a shoulder bag containing cash. The three took a tricycle driven by Jimmy Soriso.<sup>[5]</sup> Aclan, who held the two boxes, occupied the main seat inside the tricycle, while Rizza sat on the small seat to the left of the main seat. Jerwin took a seat behind Jimmy. As the tricycle was negotiating a curve near the entrance to their residence in Francisco Terrace, it was blocked by five armed men, who ordered the driver to stop. Stating that it was a hold-up, accused-appellant pointed his gun at Aclan and demanded that he hand over the bag. When Aclan refused to part with the bag, one of the hold-uppers grabbed it, and a struggle ensued.<sup>[6]</sup>

Rizza tried to help the victim keep the bag, but one of the hold-uppers pushed her inside the tricycle and succeeded in getting the bag. When the victim tried to run after the hold-upper, accused-appellant shot him. The victim fell to the ground, and the hold-uppers fled with the bag and the two boxes on board the tricycle.<sup>[7]</sup>

Jerwin Aclan testified that a hold-upper poked a fan knife (balisong) at his back. When his attacker was distracted, he punched him, but in the course of the fight he was stabbed on the right arm. Jerwin said he ran to the nearest store, leaving his father and one of the hold-uppers fighting for the possession of the bag. Then a shot rang out. When he turned around, Jerwin said he saw accused-appellant with his gun, standing over the fallen body of his father. Accused-appellant then fled on board the tricycle with his companions, carrying with them the two boxes containing the jewelry and his father's bag. Jerwin rushed to his father and, with the help of his elder brother Jomar, took him to the hospital. However, Pampilo Aclan died shortly after.<sup>[8]</sup>

SPO2 Rolito Alinea, leader of the investigating team, testified that accused-appellant was apprehended in Batangas City and taken to the Batangas City Provincial Command where he was identified by both Rizza Cervantes and Jerwin Aclan from a police line-up, consisting of accused-appellant and four civilian employees.<sup>[9]</sup>

Dr. Azucena I. Bandy prepared a Necropsy Report (Exh. B) with the following findings:

A fairly developed male cadaver measuring 162 cm. in length in rigor mortis condition over dependent portion of the body with wound described as:

Gunshot wound - thru and thru with the point of entrance measuring 1 x 1 cm. lateral surface neck left directed infero-anteriorward to the right and posteriorward to the right lacerating the jugular vessels and thoracic aorta with the point of exit measuring 1.5 x 1.5 suprascapular region right.

**CAUSE OF DEATH: SHOCK AND HEMORRHAGE DUE TO GUNSHOT WOUND INVOLVING THE JUGULAR VESSELS AND THORACIC AORTA.**

Dr. Bandy later explained her findings,<sup>[10]</sup> thus —

DIRECT EXAMINATION BY PROSECUTOR SUNEGA:

Q I am showing Exhibit B to you, and please inform the Court in layman's language as appearing in the necropsy report?

A The wound inflicted was [a] gun shot wound and this is located at the left side of the neck and goes to the right and lacerates the vessel which was the point of exit.

Q Do you recall having drawn an anatomical sketch to show the location of the wound you just described?

A I have with me the anatomical sketch.

Q Now in this anatomical sketch, did you indicate which wound was that you just described?

A The point of entry goes to the right and turn to the point of exit which is the back, which is the right scapular area. (witness pointing to the left side of the neck of the sketch)

Q May we have the anatomical sketch marked as Exhibit "C"; and the point of entry as indicated by the witness to be marked as Exhibit C-1; the point of exit as Exhibit C-2. Can you describe the point of exit with respect to the part of the body at the back?

A Scapular area is the point of exit.

Q Your finding as to the cause of death is shock and hemorrhage due to gunshot wound involving the jugular vessel [and thoracic aorta], by that do we mean Dra. the jugular vessel as well as [thoracic aorta] were [traversed] by the bullet?

A Yes, sir.

CROSS-EXAMINATION BY ATTY. BELARMINO:

Q I am showing to you Exhibit C, do we understand from your testimony that the entrance of the bullet is located at the portion of the body which is the left neck?

A Yes, sir.

Q And the exit of the bullet proceeded at the back lower portion right side of the body of the deceased, is that correct?

A Yes, sir.

Q So much so your confirmation that the entrance of the bullet is higher in trajectory than the exit?

A Yes, sir.

Q Could you say Dra. that the position of the assailant is of the higher lane than the position of the deceased when he was shot?

A The assailant may be taller than the victim.

Q And the portion of the entrance [was] on the left side would say with confirmation they [were] not face to face? May we [move] that the tagalog answer be placed on the record.

COURT:

Place it on record.

Answer of the witness

A Nakatagilid.

ATTY. BELARMINO:

Q In other words the assailant's position was on the left side of the deceased?

A Yes, sir.

Q Could you say that the victim was [seated] at the time he was shot by the assailant, who was then standing?

A Probably.

The parties stipulated, subject to the sound discretion of the Court, that the pieces of jewelry and the cash stolen from the victim were worth P2.5 million.<sup>[11]</sup>

Accused-appellant Jimmy Marquez's defense was alibi. On September 18, 1995, he said he went to his brother Arcadio Marquez's house in Taguig, Metro Manila to borrow money because he needed capital in buying and selling of fruits. Arcadio allegedly told him that the money would come from his wife's salary which would be paid on September 24, 1995 yet. Accused-appellant, therefore, decided to stay and in the meantime help his brother in the construction of a septic tank. Jimmy Marquez stayed in his brother's house from September 18 to September 25, 1995. <sup>[12]</sup> After receiving the money from his brother, accused-appellant said he left for Mabini, Batangas.

To reinforce his alibi, accused-appellant claimed that while in Taguig on September 22, 1995, the date of the crime in question, he in fact participated in the settlement of a case between the spouses Marayan. Although he was not a member of the Barangay Council, accused-appellant said he acted as one of the witnesses in the settlement.<sup>[13]</sup>

Barangay officials and other individuals who, together with accused-appellant, claimed to have participated in the settlement of dispute in their barangay corroborated accused-appellant's alibi. Cesar Gobrin, purok leader and member of

the Lupong Tagapamayapa of Western Bicutan, Taguig, and Clemente de Latade testified that accused-appellant was present during the signing of the settlement between the Marayan spouses. In fact, he said accused-appellant was the only person who was not a member of the team in their place who signed as a witness to the document. However, Gobrin admitted that there was no logbook where settlements are entered but only a compilation of the same.<sup>[14]</sup> On the other hand, Mariano Aclan testified that accused-appellant talked to him on October 26, 1997 and asked him to testify that accused-appellant was in Taguig on September 25, 1995. Mariano Aclan said he saw the document, which he signed, only when he was brought to Court when he attended the hearing prior to the one wherein he gave his testimony.<sup>[15]</sup>

Rodolfo Guiyab, barangay chairman of Western Bicutan, Taguig, testified that the alleged document of settlement in the case in which accused-appellant allegedly acted as a witness, was submitted to him unsigned by the secretary, Jesus Sarcilla. From September 22, 1995 up to the time he testified, Guiyab said he never checked his office files to see if such a document had been filed in the office.<sup>[16]</sup>

Jesus Sarcilla, the barangay secretary, identified a document as the document of settlement between the Marayan spouses. He said the document was executed by the parties on September 26, 1995 and that he signed it. He gave a photocopy of the document to accused-appellant's brother upon the latter's request. However, Sarcilla could not vouch for the integrity of the document as he could not recall when he parted with the original copy of the subject document nor the person to whom he gave it.<sup>[17]</sup>

Arcadio Marquez, accused-appellant's elder brother, also testified to corroborate accused-appellant's alibi. He confirmed accused-appellant's testimony regarding his participation in the repair of the septic tank and in the settlement of a case in their barangay between a couple as well as on the alleged physical abuse of his brother by the Batangas City police.<sup>[18]</sup> He explained that although, to his knowledge, other cases for frustrated homicide had been filed against his brother by Luisito Dueñas in Sariaya, Quezon and for murder by Virgilio Zaballero in Lucena City, the cases had been dismissed either because of desistance or because of failure of the complainant to appear at the trial.<sup>[19]</sup>

Atty. Mario Panganiban testified that he was the lawyer who assisted the accused-appellant while the latter was detained at the PNP office in Batangas City. He claimed that accused-appellant had complained of having been maltreated by the policemen, although the accused-appellant did not name those who had maltreated him. Atty. Panganiban said that although he told accused-appellant to see a physician for a physical examination, he did not know whether this was done by accused-appellant.<sup>[20]</sup>

After trial, judgment was rendered finding accused-appellant guilty of robbery with homicide in Criminal Case No. 10069-SP but acquitting him of the charge of violation of P.D. No. 1866 in Criminal Case No. 10193-SP. The dispositive portion of the trial court's decision reads:

WHEREFORE, in view of the foregoing considerations, the court finds the accused JIMMY MARQUEZ y BACAY guilty beyond reasonable doubt of the