

EN BANC

[G.R. No. 135542, July 18, 2002]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
REYNALDO VIÑALON Y SAN AGUSTIN AND ARNOLD DEVERA Y
MOCALEN, ACCUSED-APPELLANTS.**

D E C I S I O N

QUISUMBING, J.:

Before us on automatic review is the decision^[1] dated August 13, 1998, of the Regional Trial Court of Quezon City, Branch 95, finding appellants Reynaldo Viñalon y San Agustin and Arnold Devera y Mocalen guilty of robbery with homicide and sentencing each to suffer the penalty of death.

The appellants were indicted under the following Information:

That on or about the 24th day of September, 1997, in Quezon City, Philippines, the said appellants, conspiring, confederating with other persons whose true names, identities, whereabouts and other personal circumstances have not as yet been ascertained and mutually helping one another, with intent to gain and by means of violence and intimidation against persons, did, then and there, wilfully, unlawfully and feloniously rob PO1 Joseph H. Llave of the PNP National Capital Region Command, Norman A. Mapa and Reynaldo B. Elidio in the following manner, to wit: on the date in the place aforementioned, the said appellants, posing themselves as passengers boarded a Jell Transport passenger bus with Plate No. PXC-266 and while said bus was cruising along Commonwealth Avenue near Don Antonio Avenue, Brgy. Old Balara, this City, a public highway, appellants armed with handguns and bladed weapon announced a hold up and thereafter robbed and divested them of their personal properties, to wit:

PO1 Joseph H. Llave

1. One (1) firearm, cal. .45 pistol marked Armscor with SN 748966;
2. One (1) men's watch;

Norman A. Mapa

1. Cash money amounting to P5,000.00 representing the day's collection.

Reynaldo B. Elidio

1. One (1) Men's watch (Seiko-5)-----P1,600.00;

Philippine Currency, to the damage and prejudice of the offended parties within the amount aforementioned; further that by reason or on the occasion of the said robbery, and for the purpose of enabling the said

appellants to take, steal and carry away the aforementioned articles, the said appellants in pursuance of their conspiracy, with intent to kill and taking advantage of their superior strength, did, then and there, wilfully, unlawfully and feloniously attack, assault and use personal violence upon the person of one PO1 Joseph H. Llave by then and there shooting him on the different parts of his body thereby inflicting upon him serious and mortal wounds which were the direct and immediate cause of his death thereafter; that likewise on the same occasion of the robbery appellants shot with the use of handguns Norman A. Mapa hitting him on the face and Antonio C. Hernandez hitting him on the hip thereby causing them serious physical injuries which have required medical attendance for a period of more than 30 days, to the damage and prejudice of the said offended parties.

Contrary to law.^[2]

Upon arraignment, both appellants pleaded not guilty. Trial then ensued.

The prosecution presented Jimmy Solomon, the bus driver; Dr. Ma. Cristina Freyra, a medico-legal officer from the PNP Crime Laboratory Services; PO3 Pedro Walawala, the investigating officer; Dr. Reynaldo Perez, examining doctor of victims Norman^[3] Mapa and Antonio Fernandez; Reynaldo Elidio, a passenger; and PO3 Bernard Amigo, the arresting officer.

JIMMY SOLOMON testified that on September 24, 1997 at around 1:00 A.M., he was driving a Jell Transport bus with at least 30 passengers on board going to Fairview, Quezon City. Upon reaching Ever Gotesco in Commonwealth Avenue, Diliman, Quezon City, appellants and two others announced a heist. One of the hold-up men, later identified as appellant Arnold Devera, poked an ice pick at Solomon while his cohorts started divesting passengers of their jewelries and other personal belongings.

According to Solomon, one of the passengers, later identified as PO1 Joseph Llave, engaged the hold-up men in a shoot-out. PO1 Llave was able to shoot appellant Viñalon in the stomach but himself sustained three gunshot wounds -- two at the head and one at the chest area. Solomon stated that during the shoot-out, stray bullets hit the bus conductor, Norman Mapa, and one of the passengers, Antonio Fernandez. The hold-up men then directed him to stop the bus and they all alighted.

Solomon added that later, he and the remaining passengers on board proceeded to the Litex Police Detachment where he gave a statement to the police.^[4] From the police station, they brought PO1 Llave to the Malvar General Hospital but he was pronounced dead on arrival.

DR. MA. CRISTINA FREYRA conducted an autopsy on the body of PO1 Llave.^[5] She testified that she found gunshot wounds on the forehead, on the right lower portion of the nose, and on the right breast of the deceased, all of which were fatal.^[6] She stated that the cause of Llave's death was hemorrhage secondary to gunshot wounds.

The testimony of PO3 PEDRO WALAWALA was dispensed with as both parties admitted that he was the investigator of the case and that he had no personal knowledge of the incident itself.^[7]

DR. REYNALDO F. PEREZ, the doctor who treated passengers Norman Mapa and Antonio Fernandez,^[8] no longer took the witness stand because the parties admitted the contents of the Medico-Legal Certificate he prepared, showing that Mapa was shot at the left axillary area^[9] and Fernandez was shot at the right lateral pelvic area.^[10]

REYNALDO ELIDIO, a passenger, corroborated the testimony of Solomon as to the details and sequence of events. Further, Elidio identified Viñalon as the one who poked a gun at him and took his watch.^[11] He stated that out of the other three assailants, he could only identify Devera whom he saw poke an ice pick at the bus driver.^[12] He also stated that he saw Viñalon shoot PO1 Llave at the forehead and at the chest^[13] with a .45 caliber pistol.^[14] According to him, he identified the appellants as their aggressors at the Malvar Hospital where they brought PO1 Llave.^[15] Witness Elidio affirmed that he executed a sworn statement before PO3 Pedro Walawala.^[16]

PO3 BERNARD AMIGO testified that on September 24, 1997, his superior sent him, SPO2 Quinto, and SPO2 Makabarek to check on the hold-up incident.^[17] They proceeded to the Malvar General Hospital and later some of the passengers arrived and pinpointed appellants as the assailants.^[18] Viñalon was then being treated for a gunshot wound.^[19] After ascertaining their identities, the policemen frisked appellants and found in Viñalon's pocket four wristwatches, a wallet with cash, and identification papers belonging to PO1 Llave.^[20] Seized from Devera were three bladed instruments, three gold rings, and a pair of earrings.^[21]

For the defense, appellant Reynaldo Viñalon, co-appellant Arnold Devera, and Viñalon's wife, Diory Viñalon, took the witness stand.

Appellant REYNALDO VIÑALON testified that on September 23, 1997, his wife instructed him to go to Fairview, Quezon City for her brother's despedida party.^[22] At around 10:30 P.M., he boarded a Jell bus bound for Fairview and dozed off along the way. He was awakened by gunfire and realized he was shot.^[23] He disclaimed taking part in the robbery.^[24] He also denied knowing his co-appellant who took him to the Malvar General Hospital^[25] and added that it was his wife who spent for his medical treatment.^[26] He claimed that the case against him was filed without prior investigation.^[27]

His wife, DIORY VIÑALON, corroborated his testimony.^[28]

Appellant ARNOLD DEVERA, for his part, testified he was merely a passenger of the bus. He said that he brought appellant Viñalon to the Malvar General Hospital out of pity.^[29] He denied poking an ice pick at the bus driver or being part of the hold-up gang.^[30]

On August 13, 1998, the trial court convicted appellants, sentencing them as follows:

WHEREFORE, judgment is hereby rendered finding the two (2) appellants, Reynaldo Viñalon y Agustin and Arnold Devera y Mocalen, GUILTY beyond reasonable doubt of the Special Complex Crime of

Robbery with Homicide defined in and penalized by paragraph 1 of Article 294 of the Revised Penal Code, as amended by Republic Act 7659, and, there being one aggravating circumstance of "Band" (paragraph 6, Article 14, Revised Penal Code) without any mitigating circumstance to offset the same, are hereby sentenced to suffer the penalty of DEATH. Both appellants are ordered to indemnify the heirs of the late PO1 Joseph H. Llave the amount of P50,000.00 as death indemnity.

The watch (Exh. "I") of Reynaldo B. Elidio, the belongings (Exhs. "J" to "J-2") of the late PO1 Joseph H. Llave and the other valuables (Exhs. "K", "L", "M", "N" "O" & "P") including the knife (Exh. "Q") shall be kept by the Court until the final termination of this case.

Both appellants are ordered to pay the costs.

IT IS SO ORDERED.^[31]

Thus, appellants interposed this appeal seeking reversal of the judgment of the trial court on two grounds, viz.:

I

THE LOWER COURT ERRED IN FINDING THE ACCUSED-APPELLANTS GUILTY OF THE CRIME OF ROBBERY WITH HOMICIDE WHEN THEIR GUILT HAS NOT PROVED [SIC] BEYOND A REASONABLE DOUBT.

II

GRANTING ARGUENDO THAT ACCUSED-APPELLANTS WERE GUILTY OF THE CRIME CHARGED, STILL THE LOWER COURT ERRED IN IMPOSING THE DEATH PENALTY AFTER APPRECIATING THE ATTENDANCE OF THE GENERIC AGGRAVATING CIRCUMSTANCE OF A BAND IN THE COMMISSION OF THE CRIME.^[32]

From appellants' discussion of the assigned errors, the following emerge as issues for our consideration: (1) the validity of the warrantless arrest and the search and seizure incident thereto; (2) the sufficiency of the prosecution's evidence to convict appellants for the crime of robbery with homicide; and (3) the propriety of the penalty imposed.

Concerning the first issue, appellants aver that the police conducted the warrantless arrest based upon unconfirmed suspicion. On this score, we have previously held that a warrantless arrest may be made by police officers based on their personal knowledge culled from the victim herself who pointed to the suspect as the assailant at the time of the arrest.^[33] In our view, the arrest of appellants done immediately after the incident was valid for it was made by the arresting officers after the victims of the robbery pointed to appellants as the malefactors. Accordingly, the search and seizure that ensued are valid as incidental to a lawful arrest.^[34]

However, appellants seek to nullify the seizure of the objects allegedly taken from their possession. They claim they do not constitute admissible evidence as they were not duly receipted nor properly identified at the time they were taken.