

FIRST DIVISION

[G.R. No. 109760, September 27, 2000]

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
PABLO F. EMOY ALIAS "BUTONG" AND DOMINADOR F. EMOY
ALIAS "OYE", ACCUSED-APPELLANTS.**

D E C I S I O N

PARDO, J.:

Accused Pablo F. Emoy alias "Butong" and Dominador F. Emoy alias "Oye" appeal from the decision of the Regional Trial Court, Branch 19, Isulan, Sultan Kudarat finding them guilty beyond reasonable doubt of robbery with multiple homicide and frustrated homicide, the decretal portion of which reads as follows:

"WHEREFORE, upon all the foregoing considerations, the Court finds the accused, Pablo Emoy and Dominador Emoy, individually guilty beyond reasonable doubt of the crime of Robbery with Homicide.

"ACCORDINGLY, the Court hereby sentences the accused Pablo Emoy and Dominador Emoy:

"1) to suffer the penalty of reclusion perpetua;

"2) to indemnify the private offended victim, Mario Jatico, the amount of P20,000.00, jointly and severally, as moral damages; and the amount of P15,000.00 as exemplary damages;

"3) to indemnify the heirs of each of the deceased victims, Dominador B. dela Cruz and Salvador D. Javerle, Jr., jointly and severally, the amount of P20,000.00 each, as moral damages; and the amount of P15,000.00 each, as exemplary damages; and the amount of P50,000.00 each, as indemnify for death of each of the said victims; and

"4) to pay the costs.

"IT IS SO ORDERED." ^[1]

On August 16, 1991, Provincial Prosecutor Emmanuel S. De Peralta of Sultan Kudarat charged Pablo F. Emoy alias "Butong" and Dominador F. Emoy alias "Oye", with robbery with multiple homicide and frustrated homicide, under the following information:

"That in the morning of April 30, 1991, at the Sitio Danu, Barangay Sabanal, Municipality of Kalamansig, Province of Sultan Kudarat, Philippines, and within the jurisdiction of this Honorable Court, the said accused, armed with firearms, in company with thirteen (13) unidentified

fully armed men, conspiring, confederating together and mutually aiding one another, with intent to gain and by means of force and violence, did then and there, willfully, unlawfully and feloniously, take, carry away two (2) radio transceiver sets; One (1) armalite M203 Rifle belonging to M and S Logging company, Inc. with aggregate value of Ninety thousand pesos (P90,000.00), Philippine Currency to the damage and prejudice of the said owner in the aforementioned amount; that by reason or on the occasion of the robbery, the accused, with deliberate intent to kill, willfully, unlawfully and feloniously, attack, assault/ambush a service jeep Land Rover with Plate No. 659 which resulted to (sic) the deaths of Dominador De La Cruz, Salvador Jaberle and Jonathan Lanchico, and seriously wounding Mario Jatico which ordinarily would cause his death, thus performing all the acts of execution which should have produced the crime of homicide as a consequence thereof, but which nevertheless did not produce it by reason of causes independent of the will of the accused, that is, by the timely and able medical assistance rendered to said Mario Jatico which prevented his death.

"CONTRARY TO LAW, particularly Article 294 of the Revised Penal Code of the Philippines, with the aggravating circumstance of treachery and by a band.

"Isulan, Sultan Kudarat, Philippines, August 16, 1991."^[2]

Upon arraignment, on September 5, 1991, accused pleaded not guilty.^[3] Trial on the merits ensued.

On April 30, 1991, at around 10:30 in the morning, Melanio Lagasan^[4] was at Km. 37, Sitio Sabanal, Kalamansig, Sultan Kudarat, looking for Amay Saway. Lagasan was walking along the road going towards the "poblacion" of Sabanal coming from Salangsang. He wanted to see Saway as the latter expressed interest in buying his carabao. While walking, Lagasan heard shots. Looking towards the direction of the shots, he saw a number of men from behind a pile of logs and using long firearms shooting at a service jeep land rover.^[5] Lagasan was about forty (40) meters away from the ambush scene, and the assailants were about four (4) to five (5) meters away from the truck. Scared, Lagasan laid down on the ground. The service jeep land rover careened to the canal and came to a stop in a slanting position. Not to long after the firing ceased, accused Pablo F. Emoy alias "Butong" called out to his companions, among them accused Dominador F. Emoy alias "Oye". Lagasan saw both accused armed with long firearms.^[6]

Accused Pablo F. Emoy entered the truck from the rear and unloaded a sack while accused Dominador F. Emoy remained standing beside the truck. The rest of their companions stood guard. Fearing that accused and their companions might see him, Lagasan surreptitiously left the place by passing through the forest. The following day, Lagasan learned that among the victims of the ambush was Dominador de la Cruz, one of the passengers in the truck and the manager of the logging company. Two weeks later, Lagasan reported what he had witnessed to Commander Verman of the CAFGU. Since the incident, Lagasan did not see accused again, until the day he testified in court.^[7]

Mario Jatico, the driver of the service jeep land rover who survived the ambush testified that, on April 30, 1991, at around 10:00 in the morning, he was driving the service pick-up jeep of M and S Logging Company, at Barrio Salangsang on the way to the nursery. On board the jeep were Dominador de la Cruz, the resident manager, Salvador Divinagracia, "Dodong" Jaberlie, a concession guard, and two boys who hitched a ride.^[8]

Nearing the vicinity of Km. 37, Jatico passed by a person who was walking along the road. After some thirty to forty meters, their vehicle was fired upon with rapid gunfire coming from the left side of the road. Jatico was hit on his head, left thigh and abdomen. When the jeep was hit, it careened to the right side of the road. Jatico heard a shout coming from behind the jeep, as if somebody was calling for someone. He peeped through the shattered rear windshield of the jeep and saw accused, who were armed with long guns, approaching the jeep. As the two neared the jeep, Jatico pretended to be dead. Soon thereafter, one of them started to ransack the contents of the jeep. One boarded the jeep, passed the loot consisting of two (2) radio transceivers, a sack of rice, another sack containing rice and fish and two (2) firearms, to the other person outside the jeep. After looting the jeep, accused and their companions left the place and fired a shot in the process. Later, reinforcement made up of guards of the M and S Logging Company arrived at the scene and brought Jatico to Poblacion Kamalig. Afterwards, he was brought to Cotabato and then Davao City for medical treatment.^[9]

Captain Severino G. Felipe testified that he was the commanding Officer of 455th PC Company, whose area of responsibility includes the municipalities of Lebak, Kalamansig, and Palimbang. On April 30, 1991, his driver notified him of the ambush that took place at Sitio Danu, Sabanal, Kalamansig, Sultan Kudarat. Upon being informed about the incident, Captain Felipe organized his men and proceeded to the place of the incident. They arrived thereat at around one o'clock in the afternoon of the same day. There they saw a land rover jeep with bloodstains. They also saw some fifty (50) empty bullet shells of armalite and carbine scattered about five (5) meters away from the jeep.^[10]

Captain Felipe and his men conducted an on the spot investigation. He conferred with the officer-in-charge of the security force of M and S Logging Company present at the scene of the incident. He was informed that the radio transmitter and their firearms, one M-23 and a baby armalite were lost in the ambush. Captain Felipe came to know that the fatalities in the ambush were the M and S Logging Company Manager and his escorts.^[11]

Upon further investigation, Captain Felipe and his men were able to gather three witnesses, namely: Pepito Muadas, Bawe Muadas and Milanio Lagasan. After the statements of the witnesses were taken by Sgt. Milquides Valencia and T/Sgt. Demisio Cabrera, on May 27, 1991, Captain Felipe filed a criminal complaint^[12] with the First Municipal Circuit Trial Court of Lebak-Kalamansig, Sultan Kudarat against the accused Pablo F. Emoy alias "Butong" and Dominador F. Emoy alias "Oye", for robbery in band. A warrant for the arrest^[13] of the accused was issued on June 14, 1991 by Judge Isaias P. De Peralta of the Municipal Circuit Trial Court, Lebak-Kalamansig, Sultan Kudarat. On June 17, 1991, accused signed a waiver of preliminary investigation,^[14] and asked that the case be elevated to the Regional

Trial Court, Branch 19, Isulan, Sultan Kudarat. On June 19, 1991, RTC Judge Isaias P. De Peralta issued an order^[15] to forward the case to the Provincial Prosecutor, Isulan, Sultan Kudarat for the filing of an Information.

At the trial, accused put up the defense of *alibi*. Dominador F. Emoy claimed that on April 30, 1991, he was at home because his wife Isabel Emoy gave birth and that she was assisted by Sangama Paguirigan^[16] and Cristina Paguirigan, who was a midwife. His wife gave birth at around 8:00 in the morning and after which he washed the dirty linens used during the birth of their child. It was around 11:00 o'clock when he finished washing the linens at a nearby spring.^[17] To corroborate said statement of accused Dominador F. Emoy, Sangama Paguirigan testified that he was indeed at the house of Dominador F. Emoy together with his wife since April 29, 1991, because he was collecting money from Dominador F. Emoy. He and his wife stayed on up to the morning of April 30, 1991, because Isabel Emoy was having stomach pains and was in labor. Isabel Emoy gave birth at around 8:00 in the morning and they stayed on at the house of Dominador F. Emoy up to 11:00 in the morning of that day, April 30, 1991. Pablo F. Emoy, brother of Dominador F. Emoy, was at the house of Dominador on April 30, 1991.^[18]

To bolster their *alibi*, Isabel Emoy, the wife of Dominador F. Emoy, testified that she gave birth to their child at around 8:30 in the morning of April 30, 1991, and it was her husband Dominador F. Emoy, Sangama Paguirigan and Cristina Paguirigan, a "hilot", who assisted her. They also presented the birth certificate of Mark Emoy, the child who was born on April 30, 1991. She further testified that her husband together with his brother Pablo Emoy was at their house at Midtodok, Salangsang, Lebak, Sultan Kudarat in the morning of April 30, 1991.^[19]

The defense also presented Barangay Captain Tenorio Malvaran^[20] of Salangsang, Lebak, Sultan Kudarat, who testified that prosecution witness Melanio Lagasan could not have seen the ambush incident at Km. 17, Sitio Danu, Barangay Salangsang, Sultan Kudarat on April 30, 1991, because he saw Melanio at around 10:30 in the morning at his house at Barangay Salangsang, while the jeep that Brgy. Capt. Malvaran was riding on passed by the house of Melanio Salangsang. He further provided information that the family of the Emoys and the Lagasan are relatives by affinity but were not in good terms because Melanio Lagasan attempted to get the land of the Emoy family and took advantage of the ignorance of the Emoy brothers, not being educated.

Dominador F. Emoy took the witness stand and testified that at the time of the ambush he was with his wife Isabel who was giving birth and his brother Pablo was at his farm holding a "pintakasi." He further testified that he and his brother were arrested without any warrant on May 20, 1991, and a warrant was issued on June 14, 1991.

On January 29, 1993, the trial court rendered a decision, the dispositive portion of which is quoted in the opening paragraph of this opinion.

Hence, this appeal.^[21]

The accused-appellants imputes the following errors to the trial court: