

SECOND DIVISION

[G.R. No. 111102, December 08, 2000]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JAIME MACABALES Y CASIMIRO @ "JAIME CEREZA Y CASIMIRO AND JAIME MACABALES Y CEREZA," ABNER CARATAO Y SANCHEZ, ROMANO REYES Y COSME, MARCELINO TULIAO Y AGDINAWAY, RENATO MAGORA Y BURAC AND RICHARD DE LUNA Y RAZON, ACCUSED-APPELLANTS.

DECISION

QUISUMBING, J.:

On appeal is the decision^[1] dated March 25, 1993 of the Regional Trial Court of Makati City, Branch 56, in Criminal Case No. 1669, finding accused-appellants Jaime Macabales, Abner Caratao, Romano Reyes, Marcelino Tuliao and Renato Magora guilty of the crime of attempted robbery with homicide and sentencing each of them to suffer the penalty of *reclusion perpetua*.

In an Information dated March 28, 1990, said appellants and Richard De Luna, a minor, were charged as follows:

That on or about the 13th day of March, 1990, in the Municipality of Makati, Metro Manila, Philippines a place within the jurisdiction of this Honorable Court, the above-named accused, while armed with [a] fan knife, with intent of gain and by means of force, violence and intimidation, conspiring and confederating together and mutually helping and aiding one another, did then and there willfully, unlawfully and feloniously grab, steal and carry away the brown leather bag containing the following items, to wit:

Cash money	-- -- --	P5,000.00
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Three (3) Seiko Wrist

Watches	-- -- --	6,000.00
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Pair of Earring[s]	-- -- --	1,000.00
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all in the total amount of P12,000.00 belonging to Eva Katigbak, to the damage and prejudice of the latter in the aforementioned amount of P12,000.00, while the said complainant Eva Katigbak was waiting for a ride along Ayala Avenue corner Herrera Street which is a Philippine highway; that as a result or on the occasion of the said robbery, the said accused, conspiring and confederating together and mutually helping and

aiding one another, with intent to kill, did then and there willfully and feloniously stab Miguel Katigbak, a brother of Eva Katigbak, as a result of which the said victim suffered mortal and serious stab wounds which directly caused his death.

That in the commission of the said crime, the aggravating circumstance of use of motor vehicle was present.

CONTRARY TO LAW.^[2]

Arraigned on May 23, 1990,^[3] the accused pleaded not guilty. Trial thereafter ensued. However, during the trial only Abner Caratao, Romano Reyes, Marcelino Tuliao, Renato Magora and Richard De Luna^[4] were present in person. Jaime Macabales jumped bail and has remained at large. He was tried *in absentia*.

On March 25, 1993, the trial court rendered its decision, finding appellants guilty of the special complex crime of attempted robbery with homicide. In said decision, however, the trial court suspended the imposition and promulgation of the sentence on accused Richard De Luna, who was under eighteen (18) years of age at the time the crime was committed. The dispositive portion^[5] of said judgment reads:

WHEREFORE, finding accused Jaime Macabales, Abner Caratao, Romano Reyes, Marcelino Tuliao and Renato Magora guilty beyond reasonable doubt of having committed the offense of attempted robbery with homicide, defined and penalized under Art. 297 of the Revised Penal Code, there being (the) aggravating circumstances of treachery and the use of motor vehicle and no mitigating circumstance that attended the commission of the offense, they are hereby sentenced to suffer the penalty of reclusion perpetua and to pay jointly and severally the heirs of Miguel Katigbak the sum of P50,000.00 for the loss (sic) of his life and another sum of P50,000.00 for moral damages, and to pay the costs of the suit.

x x x

Considering that accused Richard de Luna was at the time of the commission of the offense only fifteen years, nine months and six days and classified as a youthful offender, pursuant to Art. 192 of Presidential Decree No. 603, otherwise known as the Child and Youth Welfare Code, the imposition and promulgation of the sentence on him is hereby suspended and he is committed to the custody and care of the Rehabilitation Center of the Department of Social Services and Development at the Boy's Town Vicente Madrigal, Tanay, Rizal, until he reaches the age of twenty-one or a shorter period depending on the report and recommendation of the Department of Social Services and Development.

x x x

SO ORDERED.

Appellants herein seasonably interposed their appeal. However, since Jaime Macabales had jumped bail, this Court in its resolution dated January 17, 1990, dismissed his appeal. We are now concerned only with the appeal of Caratao, Reyes, Tuliao, Magora and De Luna.

The facts, as narrated by the Solicitor General, are as follows:

On the night of March 13, 1990, about 8:00 P.M., Marine Captain Miguel Katigbak and his sister, Eva Katigbak, were heading towards the Makati Commercial Center (along Pasong Tamo Street) for a late night shopping and dinner. They were waiting for a ride in the corner of Ayala Avenue and Herrera Street in Makati, Metro Manila. A passenger jeepney slowly approached them. When it was directly in front of them, one of the occupants, namely accused Jaime Macabales, grabbed the handbag Eva was carrying. Eva helped by his brother, held on to her bag as Macabales pulled it. The strap snapped, and the bag fell on the pavement. While Eva tried to retrieve the bag, the jeepney stopped and its occupants -- Reyes, Magora, Tuliao, De Luna and Macabales and Caratao -- all alighted and accosted Miguel and Eva. Miguel, who was skilled in martial arts, threw down the three attackers. The two others joined the fray and held the arms of Miguel, immobilizing and rendering him defenseless. Macabales, who had not joined the initial assault, suddenly pulled out a knife and stabbed Miguel repeatedly on the chest. The group boarded the jeepney and sped in the direction of Makati Avenue, leaving the severely wounded Miguel clutching his chest.

Still in shock, Eva went to his aid. She laid him down on the pavement and looked for a phone booth to call another brother, Jerry Katigbak, whose condominium was nearby. It took several minutes to make the call as the guard of the bank fronting the crime scene refused her entrance and locked the bank doors instead. As she came out of the PT & T office where she made the call, she saw that some passers-by loaded her brother in a taxi. She boarded the taxi and accompanied her brother to the Makati Medical Center. Miguel died a few minutes after they arrived at the hospital.^[6]

The prosecution evidence included the testimony of Pfc. Eduardo Guadalupe, who testified that while manning traffic along the corners of Pasong Tamo and Pasay Road in Makati, a taxi with Patrolman William Binalla on board stopped at his post and requested assistance to pursue several suspects reportedly on board a passenger jeepney. After a brief chase, they overtook the passenger jeepney along Buendia Avenue. Pat. Binalla fired a warning shot and ordered the suspects to alight and lie down the road. As accused Macabales alighted, a fan knife fell from him. Pfc. Guadalupe picked the knife and noticed it was sticky. The officers told the suspects to board the jeepney, and ordered the driver to proceed to the police station. While on the way to the station, Guadalupe asked who owned the bloodied knife, and accused Macabales admitted owning it.^[7]

Dr. Maximo Reyes, a medico-legal officer at the NBI, who conducted the *post-mortem* examination and caused the preparation of the autopsy report, testified that Miguel sustained a stab wound in his middle back penetrating to his left chest and two more in his stomach. Two of the wounds were fatal and these could have been caused by two or more bladed instruments.^[8]

The defense, for its part, understandably presented a different version.

According to Romano Reyes on March 13, 1990, after his work at 5:00 P.M., he proceeded to the house of his relative Leticia Jimena, at Davila Street because he would be meeting his foreman, Virgilio Encarnacion, to get his salary from him. The house of his relative was just 150 meters away from his own house. While he was waiting, a friend named Benjamin Santiago, whose house was nearby, ordered three bottles of beer to drink. They finished drinking between 6:00 and 7:00 P.M. The person he was waiting for did not arrive. Because he was drunk, he rested in a jeepney owned by Tuliao which was parked in front of the house of Santiago. He stretched out on the seat inside the jeepney. Later on, the driver woke him up because the jeepney would be used in bringing the guests of Tuliao to Ayala Avenue. He asked to be allowed to continue his sleep and go with them. When the jeepney left Davila Street, he went on sleeping until a shot at Pasong Tamo woke him. The policeman informed them that one of their companions stabbed somebody at the corner of Ayala Avenue and Herrera Street. They were brought to the police headquarters. He also admitted that Macabales and he were members of Sputnik gang, and he knew all of the accused because they all resided at Davila Street. He denied alighting from the jeepney at Ayala Avenue with the other accused who ganged up on the victim. He did not talk with the other accused inside the jeepney as he was asleep. He did not see nor notice Roger Paloma inside the jeepney.

Benjamin Santiago corroborated the story of Reyes. He said that after Reyes slept in the jeepney he did not see Reyes again because he himself went inside his house and slept. He knew Tuliao, Magora and the other accused. He said Reyes and he were not with the accused that evening.

Renato Magora testified that Tuliao was the owner of the jeepney he was driving. Paloma was a guest of Tuliao the night of the crime. The latter could not drive his jeepney at that time because he was not well, so he asked Magora to bring Paloma to the terminal along Ayala Avenue. Inside the jeepney were Macabales, Caratao, De Luna, Reyes, Tuliao and Magora. He said he did not know why the others were there. Between the hours of 6:00 P.M. and 7:00 P.M. they drove along Ayala Avenue. A man and a woman flagged down the jeepney, but he decided not to pick-up passengers because one of his companions, Caratao, was lying in the jeepney without clothes on. He slowed down the jeepney because there were people crossing the street. Tuliao heard a man utter '*Bastos.*' Angered, Tuliao got off the jeepney. Tuliao accosted the man. Later Tuliao returned and told him to drive on because the man was a marine captain. He did not know if Tuliao and the man had a fight. He did not see Macabales get off the jeepney. It was only when the jeepney was moving that he saw Macabales running after them. Macabales caught up and sat behind Luna and him. They drove to Ayala Avenue and turned right to Makati Avenue. Macabales kept transferring from one seat to the other. He did not have any idea why. There was no taxi tailing the jeepney. At Goldilocks, someone flagged them, but he did not stop because he was not picking up passengers and Macabales poked a sharp object at him and told him to continue driving. It was only then that he felt nervous. He did not notice any policeman who flagged them to stop. They proceeded to Buendia Avenue. A taxi blocked their way in the intersection. He heard warning shots and he stopped driving. He asked the policeman what the problem was and he even gave his driver's license. They all got off the jeepney. When Macabales was frisked by the police, a knife fell from him.

He did not see Macabales holding a knife inside the jeepney, although Macabales did point something on his body. Macabales admitted owning the knife. At the police headquarters Macabales admitted that he was the one who stabbed the victim. Magora said he did not notice where Paloma alighted. He also denied any participation in the mauling and stabbing of the victim.^[9]

Marcelino Tuliao testified that at about 6:00 P.M. on March 13, 1990, he was at his house with Rey Magora and Roger Paloma who repaired his gas stove. After the repair, he asked Magora to drive Rey and Roger to their homes in the jeepney. De Luna, Caratao, Reyes and Macabales rode with them. At the corner of Ayala Avenue and Herrera Street, he saw persons stopping their jeepney. He heard somebody shout "*Bastos*." He told Magora to stop and he went to find out who shouted. The others in the jeepney did not alight. When he learned that the man was a marine captain whom he later came to know as Miguel Katigbak, he went back to the jeepney. When he looked back, he saw Macabales and Katigbak fighting. Macabales was holding a knife. While the fight was going on, he and Magora were in the front seat of the jeepney. The others were at the back seats. He did not see any of them help Macabales. When Macabales returned to the jeepney, he instructed Magora to drive on. Tuliao said he did not look back again because he was worried and afraid that the police might apprehend them. The jeepney went straight along Ayala Avenue. He could not remember where the jeepney turned because he was drunk. At Pasong Tamo, they were blocked by the police and warning shots were fired. He was afraid of being caught. He saw the knife when it fell from Macabales. It was picked up by Pat. Guadalupe. They were brought to the police precinct. A woman pointed to Macabales as the one who stabbed the deceased.^[10]

In their appeal, Magora, Tuliao and De Luna assign the following errors:

1. THAT THE TRIAL COURT ERRED IN FINDING THAT THERE WAS CONSPIRACY TO COMMIT THE CRIME CHARGED AMONG ACCUSED-APPELLANTS;
2. THAT THE TRIAL COURT ERRED IN APPLYING THE PROVISIONS OF THE REVISED PENAL CODE TO THE OFFENSE CHARGED WHICH IS DEFINED AND PUNISHABLE BY A SPECIAL LAW;
3. THAT THE TRIAL COURT ERRED IN APPRECIATING THE AGGRAVATING CIRCUMSTANCE OF TREACHERY IN THE CONVICTION OF ACCUSED-APPELLANTS.^[11]

Appellant Romano Reyes, on the other hand, assigns the following errors:

1. THAT THE TRIAL COURT ERRED IN HOLDING THAT ACCUSED ACTED IN CONSPIRACY WITH THE OTHER ACCUSED;
2. THAT THE TRIAL COURT ERRED IN FINDING ACCUSED GUILTY BEYOND REASONABLE DOUBT OF HAVING COMMITTED THE CRIME OF ATTEMPTED ROBBERY WITH HOMICIDE.^[12]