

THIRD DIVISION

[G.R. No. 118944, August 20, 1998]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ROMULO VERSOZA Y GARCIA AND JERRY AVENDAÑO Y
MENDOZA, DEFENDANTS-APPELLANTS.**

D E C I S I O N

KAPUNAN, J.:

This is an appeal from the 11 November 1994 Decision in Criminal Case no. 14940 of the Regional Trial Court of Malabon, Branch 72,^[1] finding appellants Romulo Versoza y Garcia and Jerry Avendaño y Mendoza, guilty beyond reasonable doubt of highway robbery with homicide as defined and penalized under Presidential decree No. 532 and imposing upon them the penalty of life imprisonment and the payment of civil indemnity in the amount of P50,000.00, interment of P70,000.00, moral damages of P100,000.00 and the costs of suit.

The Information^[2] dated 5 May 1994 charged:

That on or about the 21st day of April 1994, in Navotas, Metro Manila, and within the jurisdiction of this Honorable Court, the above-named accused; armed with a gun, conspiring, confederating and mutually helping with (sic) one another, with intent to gain and by means of violence and intimidation, did then and there wilfully, unlawfully and feloniously take, rob and carry away the passengers wristwatches with an unestimated amount while abroad a passenger jeepney with Plate No. NYZ-655, along NBB South, Navotas, Metro Manila and in the course thereof said accused with intent to kill, wilfully, unlawfully and feloniously, shoot passenger ALBERTO APLAON, hitting the latter on the back of his head, thereby inflicting upon the victim gunshot wound cause (sic) his immediate death.

Contrary to law.

Appellants pleaded not guilty to the offense charged. Their other co-accused, John Doe, remains at-large. Trial on the merits of the case ensued with the prosecution presenting four (4) witnesses, namely: (a) Estrella Aplaon, the victim's wife; (2) eyewitness, Arthur Dojenas; (3) SPO1 Daniel Ferrer, the investigating/arresting officer; and (4) Dr. Florante Baltazar, the medico-legal officer who performed the autopsy on the victim.

This case was spawned by an incident that occurred at around 9:00 in the morning of 21 April 1994. According to eyewitness Arthur Dojenas, he left his house at Sawata, Dagat-dagatan, Caloocan City that morning to report for work as headwaiter at the Savory Restaurant in Greenhills, San Juan, Metro Manila. He boarded a passenger jeepney with plate no. NYZ-655, en route to Divisoria. At

around 9:00 a.m., while the passenger jeepney was cruising along the C-3 Road, North Bay Boulevard, Navotas, Metro Manila, one of the passengers, who was later identified as Romulo Versoza, suddenly cried out: "Hold-up ito. Walang papalag."^[3]

Versoza grabble the necklace of one of the passengers who was later identified as Alberto Aplao. Aplao immediately reacted and shouted, "*Anong Hold-up?*" as he simultaneoulsy grabbed the firearm of Versoza. When Aplao successfully wrested the firearm from Versoza, someone seated at the rear of the jeepney, who was later identified as Jerry Avedaño, pulled out a gun and shot Aplao, hitting his head just above the nape. Aplao fell to the floor of the jeepney. Before alighting from the jeepney along North Bay Boulevard, one of the three perpetrators snatched the wristwatch of a passenger seated in front of the jeepney. Versoza, Avedaño and their unnamed associate ran towards the squatters' area in front of the Sulpicio Lines Compound along North Bay Boulevard.

The police authorities were subsequently summoned. Dojenas alighted from the jeepney and waited for the policeman to arrive. Meanwhile, the driver of the jeepney rushed Aplao to the Tondo General Hospital for treatment. He was pronounced dead on arrival.

Minutes later, several policeman arrived at the crime scene and conducted an investigation on the holdup incident. Dojenas volunteered to accompany the policemen to the squatters' area to look for and identify the perpetrators, but their search proved futile. Dojenas and the policemen proceeded to the Tondo General Hospital where they were informed that Aplao had died. Dojenas went with the policemen to the Navotas Police Station where he gave his statement about the incident before SPO1 Daniel Ferrer, the investigator on the duty at the Navotas Police Station.^[4] SPO1 Ferrer requested the PNP Crime Laboratory Services-National Capital Region Unit, to conduct an autopsy on the body of Aplao.^[5]

Dr. Florante Baltazar, Chief Inspector and Medico-Legal Officer, conducted the autopsy at around 1:00 in the afternoon of the same day. His examination revealed that victim Aplao died of a single gunshot wound to the back of his head.^[6] He issued a medico-legal report^[7] with the following findings: (1) gunshot wound, right parietal as the point of entry, 156.5 cm, from heel, 5 cms. From midsagittal line, measuring 0.8 x 0,7 cm., with contusion collar, measuring 0.9 x 0.8 cms., directed downwards, forwards (sic), right to left, fracturing the right parietal, left orbital plate, greater wing of the left sphenoid with a deformed slug recovered embedded thereat, lacerating the left and right cerebral hemisphere of the brain, (2) abrasion, right frontal region, measuring 3 x 2 cms., 5 cms. from anterior midline, and (3) hematoma, left infra-orbital region measuring 4.5 x 2 cms., 4 cms. from anterior midline."

Dr. Baltazar also recovered a .38 caliber slug from Aplao's head. He opined that the relative distance between the assailant and the victim was more than 24 inches and that based on the downward trajectory of the bullet on the forehead from right to left, the assailant was in a "higher" position than, and was at the back of, the victim.^[8]

At around 12:05 a.m. of 1 May 1994, SPO1 Ferrer was along R-10 Road, Sitio Sto. Niño, North Bay Boulevard conducting a follow-up investigation when Lito Francisco, another victim in a separate robbery hold-up incident, approached him. Francisco

told him that he could identify one of his assailants and accompanied SPO1 Ferrer to nearby Barangay Putting Bato where the alleged perpetrator was attending the wake of his grandmother. Upon their arrival, Francisco positively identified Versoza, a resident of R-10 Road, No. 1350 Sitio Sto. Niño, BBB South, Navotas, Manila, as the perpetrator of the holdup in which he was one of the victims. Immediately, SPO1 Ferrer frisked Versoza. He found and confiscated from Versoza a ruler measuring 8-1/2 inches long with an improvised knife at its end. SPO1 Ferrer apprehended Versoza and brought him to the Navotas Police Station for further investigation.^[9]

Thereafter, SPO1 Ferrer went to Dojenas' house and asked Dojenas to go to the Navotas Police Station to find out if any of those detained there were the perpetrators of the 21 April 1994 robbery with homicide incident. A police line-up of the detained persons, including Versoza, was formed and Dojenas unhesitatingly and positively identified Versoza as the one who grabbed the necklace of Aplaon.^[10]

Three days later, a follow-up police team apprehended and detained Avendaño. Once again, SPO1 Ferrer contracted Dojenas and asked him to go to the police station to identify any of the culprits among the detainees. Dojenas positively identified Avendaño as the person who shot Aplaon.^[11]

On 4 May 1994, Dojenas executed a *Sinumpaang Salaysay*^[12] attesting to the fact that he witnessed the holdup staged by at least three persons, two of whom being Versoza and Avendaño.

Testifying in his defense, Versoza maintained that at around 9:00 in the morning of 21 April 1994, he and his cousin, Henry Redoblado, were vending prawns at the small market located in Marcelo St., Navotas. While doing so, Versoza saw three (3) fair-skinned person with high noses and who were wearing long sleeved shirts, run towards the squatters' area with policemen in pursuit. The authorities, however, failed to arrest them.^[13] Later in the afternoon, some policemen went to the squatters' area to pick up a suspect in connection with a robbery with homicide case. The said suspect later on told Versoza that the police released him after the victim, who was then at the Tondo General Hospital, failed to identify him as one of the malefactors.

Versoza was drunk and attending the wake of his grandmother at Barangay Putting Bato when the police picked him up. He alleged that the police frisked him and place a deadly weapon inside his pocket. Then he was brought to the Navotas Police Station where he was falsely charged with illegal possession of deadly weapon. While in detention, Versoza claimed that Dojenas came and initially could not point to him as one of the malefactors. It was only when Dojenas went to the police station a second time that he identified him (Versoza) as one of the perpetrators. Versoza asserted on the witness stand that he was not acquainted with Avendaño whom he met for the first time when the latter was also detained two days after his own detention on 1 May 1994. Versoza learned that Avendaño lived 200 to 250 meters away from their house only after they were detained at the police station.

For his part, Avendaño swore that at 7:30 in the morning of 21 April 1994, he was at the Powerman Employment Agency in Padre Faura St., Ermita, Manila to file his application for a job in Bahrain. He left the agency at 11:00 a.m.

Avendaño narrated that on 3 May 1994, SPO1 Ferrer arrested him and brought him to the Naval Massage Parlor along North Bay Boulevard where one of its personnel

was asked to identify him as the person who held them up. The person failed to identify him but he was nevertheless brought to and detained at the Navotas Police Station. While in detention, he was informed that he would be charged with concealing a deadly weapon. Thereafter, a certain Mrs. Aplaon entered the detention cell but she did not point to him. Later, SPO1 Ferrer asked him to line up with four (4) other detainees. Avendaño positioned himself in the middle of the line-up. Dojenas entered and pointed to him as one of the malefactors in the 21 April 1994 robbery with homicide incident. When Dojenas pointed at him, Avendaño just bowed his head and did nothing.

On cross-examination, Avendaño testified that he left his house at around 7:30 a.m. to apply for a job in Bahrain at a recruitment agency in Padre Faura. He boarded a jeepney for Divisoria at 7:50 a.m. At around 8:12 a.m. he arrived in Divisoria where it took him about eighteen (18) minutes before he could get a ride for Padre Faura. At 9:00 a.m. or thirty (30) minutes later, he reached Padre Faura and filed his application for a job at the Powerman Employment Agency. Two hours later or at around 11:00 in the morning, he arrived home. Avendaño affirmed that he first met Versoza when they were both detainees at the Navotas Police Station. He also learned that Versoza resided in Sitio Sto. Niño, R-10 Road, North Bay Boulevard.^[14]

On 11 November 1994, the trial court promulgated the challenged decision that found Versoza and Avendaño guilty beyond reasonable doubt of the crime of highway robbery with homicide. In meting out the penalty of life imprisonment upon them, the trial court gave full faith and credit to the eyewitness account of Arthur Dojenas, rejected the defense of alibi that both accused interposed for miserably failing to support their claims with any evidence.^[15] The dispositive portion of the decision reads, thus:

WHEREFORE, premises considered, judgment is hereby rendered finding both accused namely: Romulo Versoza y Garcia and Gerry Avendaño y Mendoza guilty beyond reasonable doubt of the crime of Highway Robbery with Homicide, defined and penalized under PD No. 532 and they are both sentenced to life imprisonment.

Both accused are also ordered to pay the heirs of Alberto Aplaon the following: (a) the admitted amount of P70,000.00 spent for the death and burial of Aplaon; (b) P100,000.00 by way of moral damages; and (c) P50,000.00 for loss of Aplaon's life.

Costs against the two (2) accused.

SO ORDERED.^[16]

On appeal, Versoza and Avendaño anchor their prayer for acquittal on the alleged unreliability of the positive identification made by the lone eyewitness who testified at the trial – Arthur Dojenas. They claimed that when Arthur Dojenas pointed to them as the perpetrators, there were other detainees inside the detention cell and it was possible that one of those other detainees could have been the real culprit. They assert that Dojenas did not point to them right away during the confrontation at the police station. Neither was Dojenas' testimony corroborated by any other witness.^[17]

Specifically, appellant Avendaño attempts to discredit his identification as one of the perpetrators of the crime by claiming that his name is Cherry and that his middle name is Pagatpat while the information and the dispositive portion of the assailed decision speak of a certain "Jerry Avendaño y Mendoza."

Appellants' contentions deserve little credit.

In *People vs. Teehankee*,^[18] the Court enumerated the factors that should be considered in adopting the totality of circumstances test in resolving the admissibility of out-of-court identification of suspects:

xxx (1) the witness' opportunity to view the criminal at the time of the crime; (2) the witness' degree of attention at that time; (3) the accuracy of any prior description given by the witness; (4) the level of certainty demonstrated by the witness at the identification; (5) the length of time between the crime and the identification; and (6) the suggestiveness of the identification procedure.^[19]

Using this test in the case at bar, eyewitness Dojenas' identification of appellants at the police line-up as the perpetrators of the 21 April 1994 robbery with homicide is solid and convincing. The robbery was staged in broad daylight, thus, undoubtedly, visibility was clear and Dojenas had all the opportunity to see the culprits. He witnessed every detail of the holdup since he was one of the passengers inside the jeepney and would naturally be keenly observing what would happen next as he faced the same danger that the victim did. Seeing appellants again at the police station and at the police line-up within two weeks after the incident, Dojenas could still sufficiently remember their features and distinctly tag them as the culprits in the 21 April 1994 robbery with homicide.

Furthermore, Dojenas testified in a straightforward and categorical manner regarding the identities of the malefactors. He did not waver despite the grueling and extensive question fielded by the defense. He remained consistent and steadfast despite the defense counsel's repetitive questions seemingly designed to confuse him.^[20] He testified, thus:

Q: Now, did you ever see the two (2) accused again after that incident of April 21, 1994?

A: Yes, sir, at the Navotas Police Station.

Q: When was that, when you saw them at the Navotas Police Station?

A: May 1, 1994.

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Q: Why did the police investigator has to fetch you (sic), what is the purpose?

A: To identify the holduppers.

Q: And were you able to go to the police headquarters?

A: Yes, sir.

Q: At the Navotas Police Station?

A: Yes, sir.