

## SECOND DIVISION

[ G.R. No. 118130, September 24, 1997 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JURY MAGDAMIT, OSCAR HAZALDO ALIAS "JOE BLACK," ROMY DE VERA, YUL SUMALINOG, RICARDO GOJO, JR. ALIAS "BEGET," NELSON GONA ALIAS "AGAO," AND WILFREDO GERERO ALIAS "BOY," ACCUSED. JURY MAGDAMIT AND WILFREDO GERERO, ACCUSED-APPELLANTS.**

### D E C I S I O N

**REGALADO, J.:**

Accused-appellant Jury Magdamit and six other persons, namely, Oscar Hazaldo, alias "Joe Black;" Romy de Vera, Yul Sumalinog, Ricardo Gojo, Jr., alias "Beget;" Nelson Gona, alias "Agao;" and Wilfredo Gerrero, alias "Boy," were charged with the special complex crime of robbery with homicide punished in Article 294(1) of the Revised Penal Code, in an information which alleges:

That on or about the 21st day of August, 1988, more or less 9:00 o'clock in the evening, at barangay San Rafael, Municipality of Bulan, Province of Sorsogon, Philippines, and within the jurisdiction of this Honorable Court, the abovenamed accused armed with a hand gun and knives, conspiring, confederating and mutually helping one another, entered the premises of the Convote Aquatic Development in San Rafael, Bulan, Sorsogon, and while inside destroyed and operated the room of Jou Wen Shiong or Bon Shiong Chiu, a (T)aiwanese national, and with intent to gain, with violence against or intimidation of the occupants, did then and there, willfully, unlawfully and feloniously, rob, take and carry away television sets, betamax, betamax rewriter, electric fan, watches, rings and cash money belonging to Jou Wen Shiong or Bon Shiong Chiu with the total value of SIXTY THOUSAND PESOS (P60,000.00) Philippine Currency against the will and consent of the said owner and by reason and on the occasion of the robbery the said accused with intent to kill, did then and there, willfully, unlawfully and feloniously, shoot said Jou Wen Shiong or Bon Shiong Chiu on his head, inflicting upon him gunshot wound which caused his instantaneous death, to the damage and prejudice of his legal heirs.<sup>[1]</sup>

Of the seven accused, only Jury Magdamit and Wilfredo Gerero were arrested while the other accused remain at large. On August 17, 1989, both accused pleaded not guilty to the offense charged,<sup>[2]</sup> and trial on the merits then proceeded.

As found by the trial court, the evidence for the prosecution established that on August 21, 1988, Jou Wen Shiong, also known as Bon Shiong Chiu, a Taiwanese national, together with Ariel Serrano and other hatchery workers, were inside the compound of the Convote Aquatic Development Company located at Barangay San

Rafael, Bulan, Sorsogon. At around 9:00 o'clock in the evening of said day, Ariel Serrano, who was then inside the comfort room washing his face, saw several men, all armed, barge into the compound of Convote Aquatic Development Company. Thereafter, he saw five of them chasing Jou Wen Shiong at the basketball court while their two companions posted themselves at the door as lookouts.

The men chasing Jou Wen Shiong cornered him before he could reach the hatchery. One of them hit Jou Wen Shiong with a handgun which went off on impact. The bullet hit the latter on the left temple and pierced the brain area killing him instantly. Then the armed men rounded up the people who were in the compound and tied the hands of the men behind their backs, but left the women free. The group of armed men, which included herein appellants Jury Magdamit and Wilfredo Gerero, proceeded to destroy the doors and windows of the rooms of the victim and one Manuel Chua, then ransacked said rooms and carted away some articles of value.

Not long after the armed robbers left, Manuel Chua who earlier in the day left the compound for Tabaco, Albay, arrived. Ariel Serrano immediately informed him that several armed men entered the compound, shot Jou Wen Shiong and carted away several items therefrom. Upon seeing that Jou Wen Shiong was already dead, Manuel Chua proceeded to the building where he saw their rooms in total disarray. He thereafter discovered that several valuable items and cash money, the total value of which amounted to P60,000.00, more or less, were missing.

In the morning of August 22, 1988, Chua went to the Bulan Police Station to report the incident. The police immediately went to the scene of the crime. During their investigation, they found the dead body of Jou Wen Shiong lying flat on the basketball court inside the Convote Aquatic Development compound. The doors and windows of the room were destroyed, and the things inside were messed up.

Also on the same day, Pat. Rodrigo Rambacal, the police investigator, investigated Ariel Serrano, Numeriano Noreña, and Manuel Chua at the police station. On February 24, 1989, by reason of the arrest of several persons, a follow-up investigation was conducted. When asked to identify, from among those who were arrested, the persons who entered and robbed the Convote Aquatic Development Company, Ariel Serrano positively identified herein appellants Jury Magdamit and Wilfredo Gerero whose names he only came to know later.

In his defense, Jury Magdamit testified that in February, 1989, he was apprehended by the policemen at his residence in Tagbongan, Bulan, Sorsogon, in connection with another robbery case involving one Tim Ling Tan. He was brought to the Municipal Hall and placed in jail. At about 11:00 o'clock in the evening, he was brought to the office of Capt. Ranara where he was mauled and forced to admit his participation in the robbery that took place at the Convote Aquatic Development Company and in the killing of Jou Wen Shiong. A week later, he was brought back to the Office of Capt. Ranara, where he was forced to execute and sign a statement, prepared by the policemen, without informing him of his constitutional rights.

On his part, accused Wilfredo Gerero raised the defense of alibi. He testified that on August 21, 1988, from 9:00 o'clock up to 11:00 o'clock in the evening, he was out fishing with his brother. The boat which they used was powered by paddle and motor. After fishing, they brought their catch to a certain Tio Torong, at Iraya,

Bulan, Sorsogon, who bought their entire catch for P680.00. Then they went home. After almost seven (7) months from August 21, 1988, he was arrested by the policemen at his residence in Ilawod, Bulan, Sorsogon. He denied knowing his co-accused. He also claimed that the policemen subjected him to torture.

On December 27, 1992, the trial court rendered its decision convicting both accused of the crime charged, with the following disposition:

WHEREFORE, the Court finds the accused Jury Magdamit and Wilfredo Gerero guilty beyond reasonable doubt of the crime of Robbery with homicide with the aggravating circumstance of band.

The penalty provided for the crime is RECLUSION PERPETUA to DEATH, and taking into consideration the aggravating circumstance of band, the maximum penalty of death should be applied, but in view of the mandate of the 1987 Constitution (Article III, Section 19(1), the accused JURY MAGDAMIT and WILFREDO GERERO are sentenced to suffer the penalty of RECLUSION PERPETUA and to jointly and severally indemnify the heirs of JO(U) WEN SHIONG, a.k.a. BO(N) SHIONG CHIU, the amount of FIFTY THOUSAND (P50,000.00) PESOS; to pay the amount of SIXTY THOUSAND (P60,000.00) PESOS as actual damages; and to pay the costs.<sup>[3]</sup>

Contesting the verdict, both accused appealed to this Court. However, on October 27, 1995, accused Wilfredo Gerero died at the New Bilibid Prison Hospital,<sup>[4]</sup> hence in our resolution dated January 22, 1996, his appeal was dismissed.<sup>[5]</sup> The remaining appellant, Jury Magdamit, filed his brief wherein he faulted the court below for having found him guilty, especially by considering his extrajudicial confession which was allegedly obtained without observing his constitutional rights.<sup>[6]</sup>

After a careful review of the evidence and the records of this case, we find no reason to disturb the findings and conclusions of the trial court. Appellant's disclaimers must fail. His identity as one of the perpetrators of the crime has been positively established by prosecution witness Ariel Serrano, who testified as follows:

- q** Where you able to recognize those persons chasing Jou Wen Shiong or Bon Shiong Chiu?
- a** Yes, I recognized them.
- q** Did you recognize those 7 persons by name?
- a** I can recognize them by the face only but I do not know their names except the two whom I know
- q** Who were those persons whom you know also by name?
- a** Jury Magdamit and Wilfredo Gerero.
- q** If you are given the chance to identify them would you be able to identify them.
- a** Yes.
- q** Will you please point (to) the accused Jury Magdamit?
- a** (Witness pointed (at) a person in court and when asked of his name answered by the name of Jury Magdamit).