

## THIRD DIVISION

[ G.R. No. 105008, October 23, 1997 ]

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE,  
VS. DOMENCIANO VASQUEZ, ACCUSED-APPELLANT.  
D E C I S I O N**

**ROMERO, J.:**

This is an appeal from a conviction for robbery with homicide laid down by the Regional Trial Court in Danao City (Branch 25) in the case of "People v. Domenciano Vasquez" in 1992. The facts surrounding the death of Tortillano Suplaag are as follows:

The victim, Tortillano Suplaag, is a thirty-year old farmer who also dabbled in trading livestock. As in other market days, Tortillano was in the Lawaan Public Market in Danao City with his brother-in-law Julito Capuno on February 9, 1991. Julito related that Tortillano conversed with herein accused-appellant Domenciano Vasquez about a carabao offered for sale. Tortillano and accused-appellant agreed to meet on February 12, 1991 at Magtagobto, Danao City where Vasquez' neighbor and the owner of the carabao, Andres Castro, would bring the animal.

Araceli Capuno Suplaag recounted that on February 12, 1991, her husband had P28,000.00 which was intended for the purchase of livestock and he wore his Seiko Diver's watch when he left with Julito for Magtagobto early that morning. Before reaching Magtagobto, at about ten o'clock in the morning, Julito and Tortillano were surprised by five armed men. Julito recognized one of them by face and later identified him as herein accused-appellant Domenciano Vasquez. Julito also heard the latter, who was some six meters away, shout: "They are here. Do not run." Immediately after this, Vasquez began shooting Tortillano. The victim was hit and tried to run away but once Vasquez opened fire, his four companions began shooting both Julito and Tortillano. Julito was shot in the thigh but managed to run for safety by taking the path off the road. He left Tortillano there not knowing if his brother-in-law escaped as well.<sup>[1]</sup>

Upon reaching his parents' home in Danasan, Danao City, Julito was asked by his father, Cristuto Capuno, why he was bleeding. After Julito told them of the ambush, he was brought by his brothers and sisters to the Danao General Hospital for treatment.

Cristuto proceeded to Magtagobto to look for Tortillano. On his way there, he met some members of the CAFGU who were informed about the same incident and together they went to look for Tortillano. The latter's bullet-ridden body was found near the creek, naked. His wallet and wrist watch were also missing. On their way back with Tortillano's body, they met the victim's wife.<sup>[2]</sup>

On April 29, 1991, Domenciano Vasquez was charged in an Information for the

## crime of Robbery with Homicide:

"That on or about February 12, 1991, at 10:00 o'clock in the morning more or less, at Magtobob, Danao City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused Domenciano Vasquez with intent to gain and with intent to kill, did then and there willfully, unlawfully and feloniously shoot Tortillano Suplaag with the use of a firearm thereby inflicting upon him - gunshot wounds - which caused his instantaneous death, and thereafter took from him money amounting to P28,000.00 and his wrist watch worth P3,500, or in the aggregate sum of P31,500.00.

CONTRARY TO LAW."<sup>[3]</sup>

Domenciano Vasquez claims he has an alibi. Natividad Vasquez, his wife testified that on February 12, 1991, his uncle, Uldarico Vasquez, arrived at about eight o'clock in the morning informing them that his wife was taken ill. Uldarico recounted in open court that after eating breakfast, Natividad prepared their provisions to be taken to the farm. At about nine o'clock in the morning, Uldarico and Domenciano set out for the latter's farm in Anislagan, taking with them a bolo and a pick mattock. They stayed there until half past four in the afternoon or five o'clock, with Uldarico helping Domenciano in weeding the farm. Uldarico also claimed that the accused-appellant never left the place and had lunch with him there at the farm. The following morning, accused-appellant accompanied his uncle to the latter's farm in Mantija and stayed there for three days. In August 1991, accused-appellant learned about the warrant for his arrest from his uncle who also went with him when he surrendered first to the Barangay Captain of Mantija and then to the Vice-Mayor at Danao City.<sup>[4]</sup>

After trial on the merits, Domenciano Vasquez was convicted of the crime as charged in the lower court's decision dated January 8, 1992. The dispositive portion of said decision reads:

"WHEREFORE, the Court finds the accused Domenciano Vasquez GUILTY beyond reasonable doubt of the crime of Robbery with Homicide and said accused is hereby sentenced to suffer the penalty of imprisonment of Reclusion Perpetua with all the accessory penalties provided by law and is further ordered to indemnify the heirs of Tortillano Suplaag the sum of P50,000.00 and the further sum of P31,500.00 representing the amount taken from the deceased Tortillano Suplaag consisting of cash of P28,000.00 and the value of the wrist watch of P3,500.00 and to pay the costs.

SO ORDERED."<sup>[5]</sup>

Hence, this appeal. Vasquez argues that he should be acquitted because the trial

court committed several errors in its decision. Accused-appellant contends, first, that since conspiracy was not alleged in the information, conspiracy cannot be appreciated and considered against him. Since the gunman who shot the victim was not identified there was a logical possibility that anyone in the group of five could have shot Tortillano, and because the acts of the alleged conspirators cannot be taken against accused-appellant, the latter should not have been convicted.

After an exhaustive and careful study of the evidence on record, we found nothing that serves to discredit the testimony of the prosecution's eye-witness, Julito Capuno. His account was simple, clear and credible, specially because of his actual presence at the locus criminis. He himself was shot and was close enough to see their assailants. His testimony, not being flawed by vicious inconsistencies or improper motive is credible.

We concede that because of the prosecutor's failure to allege conspiracy in the Information and to charge the four John Does who assisted accused-appellant, Vasquez cannot be held accountable for the acts of these unidentified men. However, there is sufficient proof that Vasquez shot Tortillano and led the other four in continuous gunfire against the two unarmed men. Julito testified:

Q Now, what happened after you heard Domenciano Vasquez (say  
`They are here. Do not run)?

A They fired shots immediately.

COURT TO WITNESS

Q Who fired the shots?

A Domenciano Vasquez.

Q To whom?

A To Tortillano Suplaag.

COURT:

Proceed.

CONT'D OF DIRECT BY FISCAL JOSE MANULAT:

Q Was Domenciano Vasquez alone when he shot Tortillano?

A They were many.

Q How many?

A Five (5).

Q Five including Domenciano?

A Yes, sir.

Q Do you know the other four?

A No, sir.

Q You said that Domenciano Vasquez fired first, who was hit by