

## SEVENTEENTH DIVISION

[ CA-G.R. CR-H.C. NO. 00016, August 18, 2006 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
FRANCISCO TE-KIAT Y BAGUIO, ACCUSED-APPELLANT.**

### D E C I S I O N

**SANTIAGO-LAGMAN, J.:**

Accused-appellant Francisco Te-Kiat y Baguio ("appellant") appeals from the Decision<sup>[1]</sup> of the Regional Trial Court of Quezon City (Branch 219), dated November 20, 2003, in Criminal Case Nos. Q-01-104804 to Q-01-104805, convicting him of robbery with homicide and sentencing him to suffer the penalty of reclusion perpetua, to pay the heirs of the victim, Ming Chien Shien a.k.a. Richard Mon, Seventeen Thousand Pesos as actual damages, One Hundred Thousand Pesos (P100,000.00) as moral damages and Twenty Thousand Pesos as funeral expenses.

The Informations respectively charging appellant with murder and robbery read:

-CRIMINAL CASE NO. Q-01-104804-

"The undersigned accuses FRANCISCO TE-KIAT Y BAGUIO of the crime of **MURDER**, committed as follows:

That on or about the 11th day of October 2001 in Quezon City Philippines, the above-named accused conspiring and confederating with one other person whose true name and whereabouts is still unknown and mutually helping one another with intent to kill, with treachery and evident premeditation did then and there wilfully, unlawfully and feloniously attack, assault and employ personal violence upon the person of one MING CHIEN SHIEN a.k.a. RICHARD MON by then and there shooting him with a gun and hitting him on the trunk thereby inflicting upon him serious and grave wound which was the direct and immediate cause of his death to the damage and prejudice of the heirs of said Ming Chien Shien a.k.a. Richard Mon.

CONTRARY TO LAW."<sup>[2]</sup> (emphasis, supplied)

-CRIMINAL CASE NO. Q-01-104805-

"The undersigned accuses FRANCISCO TE-KIAT Y BAGUIO of the crime of **Robbery**, committed as follows:

That on or about the 11th day of October 2001 in Quezon City, Philippines, the said accused, conspiring and confederating with one other person whose true name/whereabouts is still unknown and mutually

helping one another with intent to gain, by means of force, violence and intimidation against person, did then and there wilfully, unlawfully and feloniously rob one Ming Chien Shien a.k.a. Richard Mon in the following manner, to wit: while Richard Mon with his commonlaw (sic) wife was on board a tricycle accused suddenly grabbed and thereafter took, robbed and carried away the following, to wit: one clutch bag containing P10, 000.00 cash and Nokia 3310 all valued at P10, 000.00 belonging to Ming Chien Shien a.k.a. Richard Mon to the damage and prejudice of the aforementioned complainant in the amount above-mentioned.

CONTRARY TO LAW.”<sup>[3]</sup> (emphasis, supplied)

When arraigned on October 25, 2001, appellant, assisted by counsel, entered a plea of “Not Guilty” to both crimes as charged.<sup>[4]</sup> Pre-trial was thus set on May 7, 2003.<sup>[5]</sup> After the termination of the pre-trial on December 4, 2001,<sup>[6]</sup> the case proceeded to trial.

The prosecution presented four witnesses, namely Medico-Legal Officer P/Supt. Joselito Rodrigo,<sup>[7]</sup> the victim's girlfriend Amelia Sales,<sup>[8]</sup> police investigator PO2 Joseph Dino,<sup>[9]</sup> and police officer PO3 Joselito Chantengco,<sup>[10]</sup> whose testimonies show the following facts:

On October 11, 2001, Amelia Sales (“Amelia”) was with his boyfriend Ming Chien Shien, a.k.a. Richard Mon (“Richard”), in their apartment located at 45-D Road 13, Pag-asa, Quezon City.<sup>[11]</sup> Around 7:00 o'clock to 7:30 that evening, as Amelia and Richard were preparing to go to the nearby Shoemart Department Store (“SM-West”), Amelia noticed from her window that a tricycle was parked in front of their apartment. The place where the tricycle was waiting being brightly lit by the street-post light and by the light coming from the apartment, Amelia saw that a man with mustache, who turned out to be appellant, was on board the driver's seat of the tricycle.<sup>[12]</sup>

Soon thereafter, Richard went down, followed by Amelia. The couple boarded the tricycle and told appellant to bring them to SM-West. Appellant nodded.<sup>[13]</sup>

From the apartment, the usual route to SM-West was through Alley 14. Instead of turning left at the said alley, however, appellant went straight ahead to Road 8. When asked by Amelia, appellant retorted, “*Traffic dun.*” Again, when appellant was supposed to turn to Road 2 heading to SM-West, he sped off to Road 3 and proceeded straight to Road 1 Extension. Amelia noticed that appellant was driving faster and faster so he asked him why he drove past Road 2. Appellant answered, “*Mas mabilis dito.*”<sup>[14]</sup>

Suddenly, appellant stopped in front of a store along Road 1 Extension. As Amelia was asking why they suddenly stopped, a motorcycle arrived and its driver accosted and conversed with appellant. Amelia repeated her question but got no answer. At this point, Richard alighted from the tricycle but before he could go far from the tricycle, the driver of the motorcycle shot him on his back. Richard immediately fell flat on the ground.<sup>[15]</sup>

The driver of the motorcycle wasted no time in taking Richard's clutch bag,<sup>[16]</sup> which contained Ten Thousand Peso (P10,000.00) cash, and a 3310 cellphone worth Seven Thousand Pesos (P7,000.00).<sup>[17]</sup> Thereafter, the man ran towards his motorcycle, together with appellant, and the two fled on board the motorcycle.<sup>[18]</sup>

Amelia sought help, took a tricycle and brought Richard to a hospital in Bago Bantay, Quezon City, where the latter was pronounced dead.<sup>[19]</sup> The autopsy conducted by Medico-Legal Officer P/Supt. Joselito Rodrigo on the cadaver of Richard, showed the following findings:<sup>[20]</sup>

"x x x    x x x    x x x

#### HEAD:

1. Abrasion, right zygomatic region measuring 1.5 x 1cm, 7-5cm from its anterior midline.
2. Lacerated wound, mandibular region measuring 3.8 x 0.5cm along its anterior midline.

#### TRUNK:

1. Gunshot wound, point of entry, vertebral region measuring 0.8 x 0.8cm along its posterior midline, 106cm from the right heel with area of tattooing (sic) measuring 8 x 5cm, 8cm right of its posterior midline directed anteriorwards, upwards and to the left fracturing the 8th vertebrae, 8th left rib, lacerating the lower and upper lobe of the left lung, 1st intercostal muscles and fracturing the left clavicle with deformed slug recovered thereat.

x x x    x x x    x x x

CAUSE OF DEATH: Hemorrhagic Shock secondary to a Gunshot Wound of the Trunk. xxx"<sup>[21]</sup>

At the hospital, the security guard reported the incident to the police.<sup>[22]</sup> Amelia told police investigator PO2 Joseph Dino ("PO2 Dino") that the tricycle of the suspect had either Body No. 427 or 247.<sup>[23]</sup> Amelia tried to remember the body number of the tricycle despite her confusion and nervousness. She recognized the importance of doing so, having been already a victim of a hold-up incident in a tricycle.<sup>[24]</sup>

Meanwhile, the police started looking for the suspect and the tricycle with the body numbers mentioned by Amelia. Subsequently, PO2 Dino learned that appellant and the owner of the tricycle, one Ernesto Reyes, were already at the Baler Police Station. Appellant and Ernesto Reyes were later brought to CID at Camp Karingal for identification by Amelia. Records show that two (2) tricycles were brought to Camp Karingal, the tricycle<sup>[25]</sup> owned by Ernesto Reyes, and driven by appellant, with Body No. 427 and another with Body No. 247, together with its driver.<sup>[26]</sup> When asked to identify the suspect, Amelia unhesitatingly pointed to appellant, whom she vividly remembered because of his face, his mustache and the manner he spoke.<sup>[27]</sup>

Appellant, for his part, interposed denial as his defense. He admitted having plied his route as a tricycle driver on October 11, 2001, from 6:00 am to 10:00 pm, but denied having Amelia and Richard as his passengers. He added that he had never know nor seen Amelia before, until she testified in court. He also denied talking to a motorcycle driver, who allegedly shot Richard. In sum, he denied having anything to do with the murder and robbery incidents. He also testified that he, accompanied by Ernesto Reyes, voluntarily surrendered himself at the Baler Police Station upon learning that he was being implicated in the said incidents.<sup>[28]</sup> Appellant's allegation of voluntary surrender was corroborated by Ernesto Reyes,<sup>[29]</sup> and the testimony of PO3 Joselito Chantengco to the effect that he did not arrest appellant.<sup>[30]</sup>

Appellant also presented his co-tricycle drivers, Leo Torres<sup>[31]</sup> and Ronaldo Franco,<sup>[32]</sup> who both testified, among others, that they plied their route as tricycle drivers from 8:00 am to 8:00 pm. on October 11, 2001; that they saw appellant at the tricycle terminal joining the queue every now and then that day and that appellant even played *cara y cruz* from 4:00 pm. to 5:00 pm. of the same day. Both, however, affirmed that they last saw appellant around 7:00 p.m. of that day.

On the basis of the foregoing evidence presented, the trial court found appellant guilty of robbery with homicide. On November 20, 2003, it promulgated a Decision<sup>[33]</sup> of even date, the dispositive portion of which reads:

“WHEREFORE, in Criminal **Case No. Q-01-104804**, the prosecution having failed to prove beyond reasonable doubt that **MURDER** was committed and that accused FRANCISCO TE-KIAT Y BAGUIO is guilty thereof beyond reasonable doubt, he is thereby **ACQUITTED** of the crime charged.

In **Criminal Case No. Q-01-104805**, finding the accused FRANCISCO TE-KIAT Y BAGUIO **guilty beyond reasonable doubt of ROBBERY WITH HOMICIDE** defined and penalized under Article 294 of the Revised Penal Code, the Court sentences him to suffer the penalty of reclusion perpetua, to pay the heirs of the victim Php 17,000.00 as actual damages, Php 100,000.00 as moral damages and Php 20,000.00 as funeral expenses.

Costs de oficio.

SO ORDERED.”<sup>[34]</sup> (emphasis, supplied)

On December 1, 2003, appellant appealed from the Decision of the trial court **both in Criminal Case No. Q-01-104804 and Criminal Case No. Q-01-104805**, to wit:

“ACCUSED, thru counsel, to this Honorable Court, respectfully gives NOTICE that he is appealing the Decision **in the above-entitled cases** dated November 20, 2003 which was promulgated on the same date, x x x.”<sup>[35]</sup> (emphasis, supplied)

In his Brief, appellant argued that:

"I- THE TRIAL COURT ERRED IN NOT FINDING THAT THE ACCUSED-APPELLANT WAS MISTAKENLY IDENTIFIED;

II- THE TRIAL COURT ERRED IN CONVICTING THE ACCUSED-APPELLANT DESPITE THE FACT THAT HIS GUILT WAS NOT PROVEN BEYOND REASONABLE DOUBT;

III- ON THE ASSUMPTION THAT THE ACCUSED-APPELLANT IS CRIMINALLY LIABLE, THE TRIAL COURT GRAVELY ERRED IN CONVICTING HIM OF THE SINGLE COMPLEX CRIME OF ROBBERY WITH HOMICIDE UNDER TWO (2) SEPARATE INFORMATIONS FOR MURDER AND ROBBERY."<sup>[36]</sup>

Appellant contends that the prosecution failed to prove his guilt beyond reasonable doubt. He raises several points,<sup>[37]</sup> which according to him negate Amelia's claim of positive identification.

*First*, Amelia purportedly admitted that she never had the occasion to closely look at the face of the tricycle driver while she was on board the tricycle and that the only time she had a glimpse of his facial appearance was when she went out of the apartment and saw that a tricycle was already waiting outside of their gate. He adds that considering the distance from where Amelia saw the tricycle waiting for them and that the incident occurred in the evening, it could be possible that Amelia mistook one person for another. He also avers that Amelia was not previously familiar or acquainted with the tricycle driver, hence, the identification becomes less than certain.

*Second*, appellant insists that a switching of tricycles could have also occurred. Inasmuch as Amelia did not look at the face of the driver anymore after boarding the tricycle, the probability stands that Amelia and Richard could have boarded another one, not the tricycle she saw waiting outside the apartment.

*Third*, because of Amelia's apparent confusion in the body number of the tricycle involved, there is allegedly a possibility that the real culprit was anyone of the drivers of the tricycles bearing Body Nos. 472, 274, 742 or 724, but considering that only the drivers of the tricycles with Body Nos. 427 and 247 were invited by the police, Amelia might have purportedly resorted to the simple process of elimination that if it is not the one then it must be the other, although the latter did not bear any semblance with the real driver actually involved in the incident.

*Fourth*, appellant's defense of *alibi* was allegedly corroborated and confirmed by his co-tricycle drivers that, on the day of the incident, he was most of the time at the terminal's waiting line, hence, there was an apparent improbability for him to be involved in the alleged robbery and murder.

*Fifth*, there is allegedly no truth to Amelia's claim that appellant left his tricycle and fled with the gunman considering that said tricycle was never recovered at the scene of the incident but was with the appellant at the time he presented himself to the police.

*Sixth*, appellant contends that his non-flight and voluntary surrender strongly indicated his innocent conscience.