

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROBERTO MENDOZA Y CRUZ, ACCUSED WHOSE DEATH SENTENCE IS UNDER REVIEW.

G.R. No. L-34290. March 28, 1980

Ponente: AQUINO, J.

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AQUINO, J.:

This is a case of robbery with homicide and physical injuries. The prosecution's evidence shows that at about ten-forty-five in the evening of April 27, 1970 Francisco Garido was driving his jeepney, with several passengers, from Quiapo, Manila to Pasay City. The jeepney was lighted.

When the jeepney stopped at the intersection of Taft Avenue and Herran (Pedro Gil) Streets, Manila, three men boarded it. After the jeepney had reached the next block or while it was in the vicinity of the Philippine Women's University on Taft Avenue, one of the three men, who had just boarded the jeepney, ordered Garido to stop it. Garido stopped the jeepney. The three men, who turned out to be ruffians, suddenly divested the passengers of their wristwatches and stabbed them and Garido with knives.

Then, a gunshot was heard. The three malefactors jumped out of the jeepney and fled to Remedios Street in the direction of M. Adriatico Street. The victims of the holdup were the driver and three passengers named Alicia Victoria, Claro Dabajo and Oscar G. Tagudin.

Tagudin, 20, died upon arrival in the hospital. He sustained a stab wound in the abdomen which lacerated his left kidney and abdominal aorta. He had also an incised wound on the left wrist.

Dabajo, 27, whose Titus wristwatch valued at one hundred pesos was taken by one of the robbers, had a stab wound in the abdomen which affected his intestines and kidney. He survived due to timely medical attendance.

Alicia Victoria, 19, had a stab wound also in the abdomen. She stayed in the hospital for six days. Her Seiko wristwatch valued at one hundred eighty pesos was taken from her but she was able to recover it from the snatcher when he was leaving the jeepney.

Garido had a slight stab wound in the arm. His earnings amounting to twenty-five pesos, which were in the box, were missing.

Fifty-three days after that holdup, Roberto Mendoza, 24, a resident of 7666 J. B. Roxas Street, Barrio Olympia, Makati, Rizal, a construction helper and a member of the Sigue-Sigue Sputnik (SSS) gang, was charged in the Circuit Criminal Court of Manila with robbery with homicide and multiple serious physical injuries as one of the three malefactors who perpetrated the holdup.

At the trial, he relied on an alibi. He testified that at the time the holdup was perpetrated he was on vacation in the house of his grandmother at the Robes Subdivision, San Jose, Bulacan. He said that after he was arrested for vagrancy in Paco, Manila, he was brought to the house of Alicia Victoria by agents of the Constabulary Criminal

Investigation Service (CIS) and then returned to Camp Crame, Quezon City. He was allegedly released by the CIS agents for lack of evidence.

He, together with twelve persons, was arrested on June 18, 1971 at Quirino Avenue, Parañaque by more than ten Manila policemen and brought to Precinct No. 8. He said that on the way to the precinct he was repeatedly boxed and mauled by the policemen. He denied that he was identified by Alicia Victoria in a lineup.

Mendoza offered as a witness one Belinda Diaz, a laundrywoman, his alleged common-law-wife, to corroborate his alibi. The presentation of Belinda turned out to be a disaster because she did not confirm Mendoza's alibi. She testified that Mendoza's wife was a woman named Helen. But about five minutes after giving that testimony, she said that she was Mendoza's wife and that she merely invented the name "Helen".

The trial court rejected Mendoza's alibi and gave credence to Alicia Victoria's identification of Mendoza as one of the three malefactors who participated in the holdup. It convicted him of robbery with homicide, aggravated by craft and abuse of superiority, sentenced him to death and ordered him to pay an indemnity of thirty-two thousand pesos to the heirs of Oscar Tagudin, to return his watch to his heirs or to pay them the reasonable value thereof in the sum of fifty pesos and to pay Francisco Garido the sum of twenty-five pesos.

Mendoza did not appeal from that decision. The case was elevated to this Court for automatic review of the death penalty.

Counsel de oficio, who was designated to present the side of the accused, conscientiously studied the case. He contends in his well-written brief that Mendoza's guilt was not proven beyond reasonable doubt because one of the robbery victims, Claro Dabajo, completely failed to identify Mendoza; the identification made by the driver was false, and the identification made by Alicia Victoria was inconclusive.

In this case, as in other criminal cases, the controversy centers on the identification of the accused especially considering that he pleaded an alibi. Was Mendoza one of the alleged three hoodlums who robbed the jeepney passengers?

No peace officer testified as to how Mendoza became a suspect in the case and how he was apprehended. Alicia Victoria, one of the victims, testified that about a week after the robbery, Mendoza was brought to her residence for identification by three CIS agents.

Then, more than a year later or before the trial, Alicia, at the request of the police, again fingered Mendoza in a lineup of thirteen male persons in the police precinct. The mother of Tagudin (the deceased victim) brought Alicia to the precinct. The accused did not say anything when Alicia pointed to him as the one who had stabbed her and taken her Seiko watch.

In the sketch of the seating arrangement in the jeepney, Alicia indicated that Mendoza sat opposite her. She testified on cross-examination:

Defense counsel: You are positive in the pointing of Roberto Mendoza to the CIS as the one who stabbed and grabbed your watch that night?

Witness Victoria: Yes, sir.

Q. Why? - A. Because he was across me in the jeep.

x x x

x x x

x x x

Q.

by Court: As (and) up to this time are you positive that the accused was the one? - A. Yes, sir.

Q.

Why? - A. I still remember him, sir.

Q.

by defense counsel: Is there any particular mark which made you so particular of your identification of the accused Mendoza? - A. His hair before was long and I was looking at him intently as he was sitting in front of me.

Q. It was only the hair that made you particular of your identification x x x? A. His face also. (48-50 tsn June 28, 1971).

The driver of the jeepney also identified Mendoza in the course of his testimony as the person who stabbed him on the night in question.

We have painstakingly examined the evidence. Our conclusion is that the judgment of conviction should be affirmed and that the death penalty was properly imposed by the trial court. The robbery with homicide absorbed the physical injuries (People vs. Maranan, 121 Phil. 620, 625).

However, for lack of the requisite ten votes, the death penalty is commuted to reclusion perpetua.

The trial court's judgment with respect to the civil liability is affirmed with the modification that the accused should return to Claro Dabajo his Titus wristwatch valued at one hundred pesos (not that of Oscar Tagudin for nothing was taken from Tagudin) and, if unable to do so, to pay the value thereof. Costs de oficio.

SO ORDERED.

Fernando, C.J., Teehankee, Barredo, Makasiar, Antonio, Concepcion, Jr., Fernandez, Guerrero, De Castro, and Melencio-Herrera, concur.

Abad Santos J., in abroad.

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