

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
RESTITUTO PERCIANO Y CAMACHO, JOHN DOE, PETER DOE,
ACCUSED-APPELLANT(S).**

G.R. No. 101576. June 27, 1994

Ponente: Puno, J.

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Puno, J.:

Accused was charged with Attempted Robbery with Homicide before the Regional Trial Court of Quezon City.[1]
The Information,[2] dated October 30, 1989, reads:

“That on or about the 26th day of October, 1989, in Quezon City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring together, with intent to gain, by means of violence upon person, did then and there wilfully, unlawfully and feloniously commence the commission of robbery directly by overt acts, by then and there attempting to rob EPITACIO AGANAN y SORBITO, in the following manner, to wit: on the date and place aforementioned, the said complainant who was then driving his Tamaraw Pick-Up with plate No. NGR-256 along Janet St., San Miguel Subdivision, Tandang Sora, this City, the above-named accused boarded said Tamaraw Pick-up and upon reaching Visayas Avenue, Brgy. Vasa, this City, accused Restituto Perciano y Camacho armed with a gun ordered the complainant to stop then announced a hold-up, but said accused did not perform all the acts of execution which would produce robbery by reason of some cause or accident other than their own spontaneous desistance, that is, complainant immediately started the engine of his vehicle, prompting the accused to shoot said Eпитacio Aganan y Sorbito, hitting the latter on his right armpit, thereby inflicting upon him serious and mortal gun-shot-wound which was the direct and immediate cause of his death, to the damage and prejudice of the heirs of said Eпитacio Aganan y Sorbito, in such amount as may be awarded to them under the provisions of the Civil Code.

“Contrary to law.”

Upon arraignment, accused Restituto Perciano y Camacho pleaded not guilty.[3] He underwent trial.[4]

The facts:

The victim Eпитacio Aganan was a fish vendor. On October 26, 1989, he was to go to Navotas Fishport to buy fish. At around 10:35 P.M., that same day, Eпитacio, his daughter Rhodora Aganan, and two (2) other companions, namely, Flora Fuentes and Sancho Ignacio, headed for the fishport on board a Tamaraw pick-up vehicle. Eпитacio was the driver. Seated beside him was Rhodora. Sancho and Flora, on the other hand, sat at the back portion of the Tamaraw. While they were passing along Janet Street, more or less one (1) kilometer from the Aganan residence,[5] three (3) men flagged down their vehicle and said “Manong, makikisakay ho.” Eпитacio acceded saying: “Sige, diyan sa likod.”[6] Rhodora thus asked her father who those men were. His father replied: “Mga taga diyan lang.”[7] One of the three (3) men, later identified as accused Restituto Perciano y Camacho, sat opposite Flora. He was wearing a maong jacket and a security guard outfit.[8]

Upon reaching Ledesma Court, along Visayas Avenue, the three men requested Eпитacio to stop the Tamaraw as

they were going to alight. As soon as they alighted, accused Perciano, walked towards the right side of the vehicle, announced a “hold-up” and poked a gun on Eпитacio. Nervous, Rhodora looked out of the window and saw Restituto from half a meter distance holding a gun with his left hand. The gun was fired and Eпитacio was hit on the right armpit. Eпитacio stepped on the accelerator, leaving behind the hold-uppers who immediately fled.

After a short distance, the wounded Eпитacio lost control of the vehicle which crashed against a Meralco lamp post. He collapsed on Rhodora’s lap. Rhodora shouted for help. People came and rushed Eпитacio to the East Avenue Medical Center. He was dead on arrival.

The autopsy conducted on the victim revealed the following:

“CAUSE OF DEATH: Hemorrhage, severe, secondary to gunshot wound.

“REMARKS: - One (1) deformed slug was recovered, submitted to Firearms Investigation Section, NBI, for examination.” (emphasis ours)

(Autopsy Report No. N-89-3419)[9]

Previous to the incident, or at around 9:00 P.M., on October 26, 1989, Norma Lopez, caretaker of a sari-sari (variety) store along Janet Street, saw the accused and two (2) other men within the vicinity. They were walking back and forth across the street. Later, accused Restituto approached her and asked for one (1) bottle of Coke solo. Accused was wearing a security guard uniform. She, however, failed to see his name tag as he was wearing a maong jacket.[10] After giving him the softdrink, he returned to his companions who were waiting for him across the street. While they were drinking, she struck a conversation with them. They told her they were waiting for somebody. After an hour, the Tamaraw driven by Eпитacio Aganan, whom she had known for three (3) years, passed by. She saw Rhodora and two other companions on board the Tamaraw. Accused and his companions then left without paying for the softdrink. They boarded the Tamaraw driven by Eпитacio.

The defense was anchored on alibi and denial.

Restituto Perciano was allegedly in his post in San Pedro IV Subdivision, Tandang Sora, Quezon City from 8:00 P.M., on October 26, 1989, until 6:00 A.M. the following day. He and his co-security guard, Rufo Dabban, Jr. engaged in small talk for thirty minutes. Restituto was then complaining that he had a hard time sleeping. Thereafter, Rufo proceeded to his post some seventy five meters away from Restituto’s post.

At twelve midnight, Rufo blew his whistle, a standard operating procedure to verify whether the security guards on duty were awake. The whistle did not draw any response from Restituto. Rufo then checked on Restituto and found the latter sleeping at his post. He woke him up. Restituto stood up and blew his whistle as Rufo returned to his post. The next day, October 27, 1989, at 6:00 A.M., Rufo and Restituto went home.

At 8:00 P.M. of the same day, accused Restituto Perciano and Rufo Dabban, Jr., again reported for work. The policemen came and took them to the police station for investigation. Restituto Perciano was identified by Rhodora as the gunman. Subsequently, the suspects were brought to Camp Crame and subjected to a paraffin test. Chemistry Report C-1650-89 showed these findings:

“FINDINGS:

“x x x x x .

“1. The left hand of RESTITUTO PERCIANO gave POSITIVE result to the test for gunpowder nitrates while the right hand gave a negative result; (emphasis ours)

“2. Both hands of RUFO DABBAN gave a NEGATIVE result to the test for gunpowder nitrates.”

Three (3) sample bullets, fired from the service gun[11] of Restituto, were tested vis-a-vis the fatal bullet (marked “EA”) recovered from the body of the victim. The test conducted by the Firearms Investigation Section of the National Bureau of Investigation concluded as follows:[12]

“FINDINGS-CONCLUSION:

“Comparative examinations made between the evidence bullets fired from PALTIK (S & W) Revolver, Caliber .38, SN 1219399 revealed POSITIVE results; said evidence bullet marked “EA” was fired from this particular firearm.” (Emphasis ours)

The security guard attendance logbook of San Pedro IV Subdivision was also presented in evidence. Page 45 thereof showed the signatures of Rufo and Restituto opposite the date October 26, 1989. During the hearing, accused Restituto tried to establish that he was a right-handed person and could not be the left-handed gunman alluded to by the prosecution. He signed his name five (5) times before the trial judge.

On the basis of the evidence adduced by the parties, the trial court rendered judgment, finding the accused, Restituto Perciano y Camacho, guilty as charged. The dispositive portion of the Judgment,[13] dated August 14, 1991, reads:

“WHEREFORE, finding accused RESTITUTO PERCIANO y CAMACHO guilty beyond reasonable doubt of the crime of attempted Robbery with Homicide, (said accused) is hereby sentenced to suffer the penalty of RECLUSION PERPETUA, to pay the heirs of the deceased the sum of P50,000.00, without subsidiary imprisonment in case of insolvency, plus all the accessory penalties provided for by law, and to pay the costs.

“SO ORDERED.”

Hence, this appeal where accused-appellant questions the credibility of the witnesses for the prosecution.

We affirm the judgment of conviction.

Rhodora positively identified the accused-appellant as the gunman. She could not have been mistaken as she was barely half a meter away from accused-appellant when he pulled the trigger on her father. At that time too, the lights inside their Tamaraw vehicle were on. She testified:

“PROSECUTOR BELTRAN:

“Q: And after these three persons had hitched a ride with your Tamaraw vehicle being driven by your father, where did you go next?

“A: When we reached Ledesma Court, Visayas the three men asked that my father stopped (sic) the vehicle so that so that they can alight.

“Q: And did your father stop the vehicle upon (the) request of these three persons?

“A: Yes, sir.

“Q: When your father stopped the vehicle, what happened?

“A: The three men alighted and one of them immediately went to my father’s side and pointed a gun at him.

“Q: By the way, where were you seated all along while you were coming from your house and passed through Janet Street and up to the time when these three men alighted from your vehicle?

“A: I was beside my father on his right side.

“Q: You said that one of the three men who had earlier hitched a ride with your Tamaraw pick up went to your

father's side and poked a gun?

"A: Not my father's side, sir. It is right side. On the right side of the Tamaraw.

"Q: And poked a gun at whom?

"A: My father.

"Q: When this person poked a gun at your father, did you hear them say anything? This man?

"A: Yes, sir.

"Q: What did they say?

"A: They said hold up.

"Q: And when you heard these persons say hold up, what did you do?

"A: Sir, I looked at the face of the man.

"Q: How about your father, what did he do?

"A: It was this way, sir. When he pointed a gun, he immediately fired it.

"x x x x x x x x.

"Q: Will you be able to identify any or all of these three persons when you see them again?

"A: The one who shot my father I saw him, sir.

"x x x x x x x x

"Q: Will you look around the courtroom and see if he is inside the courtroom?

"A: Yes, sir.

"Q: Please point to him?

"A: There, sir. (Witness pointing to a man inside the courtroom who gave his name as Restituto Perciano).

"Q: Now, more or less, how far were you from the accused when you saw him shot your father?

"A: More or less, half meter.

"Q: And will you tell the Honorable Court if there was any light which was coming from inside your vehicle at the time your father was shot?

"A: Yes, sir. There was light inside our Tamaraw.

"Q: Did you take a look at the gun or the firearm which was used?

"A: Yes, sir.

"Q: Can you describe it to the Honorable Court?

"A: It looked like a revolver.

"x x x x x x x x.

"Q: I would like to make it of record your Honor, that since about ten minutes ago, the witness has been crying especially immediately after she pointed to the accused. (emphasis ours)

(TSN, February 6, 1990, pp. 6-12)

Her credibility is enhanced by the fact that she had no ill-motive to testify falsely against the accused-appellant. She did not know accused-appellant before the incident. It is a rule that “when there is no evidence indicating that the principal witness for the prosecution was moved by improper motive, the presumption is that he was not so moved and his testimony is entitled to full faith and credit.”[14] Thus, as between the alibi of accused-appellant and the positive declaration of Rhodora identifying the accused-appellant as the gunman, the latter deserves greater credence.

We are not convinced of accused-appellant’s claim of innocence. His left hand was positive for gunpowder nitrates. He did not explain the presence of these nitrates. Instead, he tried to prove that he is right handed. But the fact that he is right handed does not negate the possibility that he fired at the victim using his left hand. The gun in question is a .38 caliber pistol which could easily be fired. More importantly, the prosecution had proved that the fatal bullet came from the service gun of accused-appellant.

The evidence that accused-appellant reported for work, on October 26, 1989, at around 8:00 P.M., is not indubitable. Buen Nicol, the custodian of the attendance logbook of the San Pedro IV Subdivision, testified as follows:

“PROSECUTOR ALAMEDA:

“Q: Mr. Nicol, do you remember where you were on or about October 26, 1989 at 6:00 o’clock in the evening?

“A: Sir, I could not remember where I was during that time.

“Q: And you could not also remember Mr. Nicol if the security guards assigned to the subdivision where you are the board member reported for work on October 26, 1989?

“A: Yes, sir.

“Q: And you are not in a position to tell as to whether or not the signature appearing opposite the name Restituto Perciano is the signature of Perciano because you were not present at that time although you are the custodian of this logbook?

“A: They signed, sir, in the morning of October 27.

“Q: So, the procedure of these security guards in signing their names in this logbook is that when they reported for example on October 26, 1989, they did not immediately sign their names?

“A: Yes, sir.

“Q: And they only signed their names the following day, October 27, 1989 in the morning?

“A: IN THE morning.

“Q: So that you are not in a position to tell us whether or not these guards reported for duty the day before because they only signed their names the following day?

“A: Yes, sir.”

(TSN, December 11, 1990, pp. 13-14).

The unexplained presence of gunpowder nitrates on the left hand of accused-appellant, the slug recovered from the body of the victim which matched the test bullets from accused-appellant’s service gun, the nature of the

wound sustained by the victim and the positive identification of accused-appellant as the gunman cannot be overcome by the alibi of accused-appellant.

The trial court did not err in finding accused-appellant guilty beyond reasonable doubt of Attempted Robbery with Homicide. Craft was employed in the commission of the offense since accused-appellant and his cohorts pretended that they were only after a free ride when they flagged down the vehicle of the victim. Taking advantage of the goodness of the victim, accused-appellant, albeit unsuccessful, commenced to rob the victim but killed the victim in the process.[15] Considering these circumstances, the trial court was correct in imposing the penalty in the maximum period, that is, reclusion perpetua.[16]

WHEREFORE, premises considered, the judgment of the trial court, finding the accused-appellant RESTITUTO PERCIANO Y CAMACHO guilty beyond reasonable doubt of Attempted Robbery with Homicide, is AFFIRMED in toto. Accused-appellant is sentenced to suffer the penalty of reclusion perpetua[17] and to pay civil indemnity to the heirs of the victim, EPITACIO AGANAN, in the amount of fifty thousand pesos (P50,000.00). With costs against accused-appellant.

SO ORDERED.

Narvasa, C.J., (Chairman), Padilla, Regalado, and Mendoza, JJ., concur.

[1] Docketed as Criminal Case No. 89-7941.

[2] Original Records, p. 1.

[3] Original Records, pp. 5 & 6.

[4] His companions that fatal evening remained unidentified.

[5] In Carol Street, San Miguel Subdivision, Tandang Sora, Quezon City.

[6] TSN, February 6, 1990, p. 23.

[7] Ibid.

[8] TSN, March 13, 1990, p. 14; TSN, May 16, 1990, pp. 15 and 16; Exhibit "F."

[9] Marked as Exhibit "A."

[10] TSN, May 16, 1990, pp. 15-16.

[11] A paltik, .38 caliber pistol, with serial number 1219399 (Exhibit "H").

[12] See Exhibit "N".

[13] Penned by Judge Maximiano C. Asuncion.

[14] People vs. Gerente, G.R. No. 95847-48, March 10, 1993, 219 SCRA 756.

[15] People vs. Lee, G.R. No. 66848, December 20, 1991, 204 SCRA 900, 911.

[16] Article 297 of the Revised Penal Code provides:

"Art. 297. Attempted Robbery and frustrated robbery committed under certain circumstances. - When by reason or on occasion of an attempted or frustrated robbery a homicide is committed, the person guilty of such offenses shall be punished by reclusion temporal in its maximum period to reclusion perpetua, unless the homicide

committed shall deserve a higher penalty under the provision of this Code.”

[17] See also *People vs. Casalme, et al.*, No. L-11057, June 29, 1957, 101 Phil 1249.

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