

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
RAMON SUMALDE @ “WIL CENIZAL,” EDGAR
MACARSE, BERNARDO PACIFICO @ “JUL” (DISMISSED),
AND JOHN DOE, ACCUSED.**

G.R. No. 121780. March 17, 2000

Ponente: MENDOZA, J.

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MENDOZA, J.:

This is an appeal from the decision[1] dated October 7, 1994 of the Regional Trial Court, Branch 39, Iloilo City, finding accused-appellant Edgar Macarse guilty of Highway Robbery with Homicide under Presidential Decree No. 532[2] and sentencing him to reclusion perpetua.[3] In addition, accused-appellant was ordered to pay the heirs of victim Gerry Puniel P12,430.35 as actual damages, P50,000.00 for his wrongful death, P30,000.00 for moral damages, P152,000.00 for loss of earning capacity, plus costs of suit.

The Information[4] against accused-appellant and four other suspects alleged—

That on or about the 10th day of August, 1990, in the Municipality of Cabatuan, Province of Iloilo, Philippines and within the jurisdiction of this honorable Court, the above-named accused, all of them armed with guns and knife, conspiring, confederating and mutually helping each other, with intent to gain, and by means of threats and intimidation, did then and there willfully, unlawfully and feloniously, take, steal and carry away cash amounting to FIVE HUNDRED PESOS (P500.00), Philippine Currency, belonging to JOEL BINAYAS, a conductor of a passenger jeepney while the said vehicle was en route to Janiuay, Iloilo and some undetermined cash and valuables belonging to the passengers on board the said vehicle, to the damage and prejudice of said Joel Binayas in the said amount and also to the damage and prejudice of the different passengers in an undetermined amount; that on the occasion of said highway robbery, and to enable them to take and carry away their loot, the herein accused in pursuance of their conspiracy, taking advantage of their superior strength and number, with intent to kill, did then and there willfully, unlawfully and feloniously shoot Gerry Puniel who suffered mortal wounds on his head which caused his death immediately thereafter.

CONTRARY TO LAW.

Only accused-appellant was arrested. The other four have remained at large. Upon arraignment, accused-appellant pleaded not guilty, whereupon he was tried. The prosecution called to the witness stand two eyewitnesses: Enrico Adelantar, dispatcher of passenger jeepneys plying the Iloilo City-Janiuay route and a passenger at the time of the robbery, and Joel Binayas, the jeepney's conductor. Based on their testimonies, this is how the crime was committed:

Gerry Puniel was the driver of a passenger jeepney plying the Iloilo City-Janiuay route. At around 5:45 P.M. of August 10, 1990, the jeepney left the station in front of the provincial capitol for Janiuay, Iloilo. It was loaded to capacity with 21 passengers. In addition, three passengers, who could not be seated, hitched at the back of the vehicle, together with its conductor, Jose Binayas, and the dispatcher, Enrico Adelantar.

To reach its destination, the jeepney had to pass through the municipalities of Pavia, Sta. Barbara and Cabatuan. At Sta. Barbara, one of the passengers, later identified by Binayas and Adelantar as accused-appellant Edgar Macarse, called the driver's attention as there were more passengers on the road. When the jeepney stopped, four men boarded it.[5] One climbed to the top of the vehicle while the other three hitched at the back. By this time, the dispatcher Adelantar, had already transferred from the back of the vehicle to the top. As the jeepney was leaving the last barangay of Sta. Barbara, one of the four men, later identified as Ramon Sumalde, went from the back to the front of the vehicle and seated himself at the right of the driver.

Upon reaching Tabucan in the town of Cabatuan and after crossing the bridge near the Bangga Bliss, accused-appellant and the four men who boarded the jeepney at Sta. Barbara, announced a hold-up and ordered the driver to stop the vehicle. Four of the robbers, including accused-appellant, were armed with .38 snub-nosed revolvers while one had a knife. Accused-appellant pushed Binayas inside the jeepney and told the passengers not to move.[6] Gerry Puniel, the driver, told Ramon Sumalde that "[they] are friends," to which Sumalde answered, "So you know us." He then fired three shots at Puniel, hitting him twice, first on the right side of his head, then on his face. One of the robbers, known only as "Padojinog," then took the driver from his seat, placed him in a canal beside the road and drove the jeepney away. The other robbers divested the passengers of their money. Accused-appellant took from Binayas the latter's collection of P500.00.[7]

When they reached the Bliss project, the robbers stepped out and fled. Joel Binayas then drove the jeepney back to the site where Gerry Puniel had been left. They found that he had been taken to the Cabatuan Hospital. Puniel was later transferred to another hospital where he eventually died.

At the time of his death, Gerry Puniel was 24 years old. His mother, Adelia Puniel, testified that Gerry was earning not less than P100.00 a day as a jeepney driver. She said she was deeply saddened by the death of her son and that she incurred expenses comprising of medical bills and funeral expenses.

Accused-appellant testified in his defense. He contended that he could not have taken part in the robbery as he was home the whole day of August 10, 1990 because of a shotgun wound on the back. He presented a medical certificate[8] issued by Dr. Maximo Nadala that he was confined at the Iloilo Doctor's Hospital from May 4, 1990 to May 10, 1990 for treatment of a shotgun wound. He also claimed that from 5 P.M. to 7 P.M. that day, he had visitors, his friend and compadre Rene Lorca and the latter's uncle, Emmanuel Malones, with whom he had drinks. This was corroborated by Rene Lorca. Accused-appellant further stated that he only learned that he was a suspect in the robbery after he was arrested in November 19, 1991, although he admitted that the day after the incident, on August 11, 1990, Lorca told him that he was a suspect, as reported by the local radio station. He thought, however, that Lorca was only kidding. He presented police clearances[9] attesting to the fact that prior to August 10, 1990, he had no record in the Cabatuan and Maasin police stations. Accused-appellant also offered in evidence a Barangay Clearance[10] issued by Barangay Captain Pablo Velasco, stating that he was a person of "integrity with exemplary conduct and good moral standing."

The defense also called to the stand two police officers, SPO3 Tranquilino Tormon and PO3 Rodolfo Calusay. SPO3 Tormon had been the Philippine National Police (PNP) Station Commander of Cabatuan at the time of the robbery. He testified that he took down the statement (Exh. 3) of Joel Binayas.[11] He denied that he showed Binayas some photographs from which Binayas was able to identify accused-appellant. However, he could not tell whether other policemen showed Binayas the pictures.[12] On the other hand, PO3 Calusay testified that the police station had a "gallery of wanted persons" (Exh. 4) and that said gallery did not have accused-appellant's picture, although it had that of Ramon Sumalde.[13]

The trial court found the prosecution evidence credible. It ruled that accused-appellant's alibi could not prevail

over his positive identification by the prosecution witnesses Joel Binayas and Enrico Adelantar.[14] It held that there was conspiracy between accused-appellant and the other suspects so that, although only Ramon Sumalde shot Puniel, all those in conspiracy were liable for the latter's death.

Hence this appeal. Accused-appellant contends that—

- THE TRIAL COURT ERRED IN GIVING UNDUE WEIGHT AND CREDENCE TO THE TESTIMONIES OF ENRICO ADELANTAR AND JOEL BINAYAS DESPITE INHERENT INCREDIBILITY AND INCONSISTENCIES.
- THE TRIAL COURT ERRED IN NOT UPHOLDING THE DEFENSE OF ALIBI INTERPOSED BY THE ACCUSED-APPELLANT DESPITE THE FACT THAT IT WAS CORROBORATED BY AN IMPARTIAL WITNESS.
- THE TRIAL COURT ERRED IN FINDING [THE] ACCUSED GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF HIGHWAY ROBBERY WITH HOMICIDE.

These contentions are without merit.

First. Accused-appellant was identified by prosecution witnesses as one of the five men who robbed the passengers of the jeepney driven by Gerry Puniel on August 10, 1990. Joel Binayas was the conductor of the jeepney. Although he did not know accused-appellant or any of the other suspects, he was able to identify him and Ramon Sumalde on the basis of pictures of wanted persons shown to him by a certain Tormon of the Cabatuan police. His testimony is as follows:[15]

ATTY. DEGUMA:

Before August 10, 1990, you did not even know this Edgar Macarse nor where he lives?

A

I don't know him yet.

Q

His name was only mentioned to you as one of the hold-uppers and you don't know him?

A

Before August 10, 1990, I don't know him but when the policemen show the pictures to me, I recognized him.

Q

When did you see that picture of Edgar Macarse?

A

In the police at Cabatuan, in August 15, 1990 when my testimony was taken.

Q

Who was the policeman who showed to you the alleged picture of Edgar Macarse?

A

Tormon.

PROSECUTOR:

He is saying something that the picture of Edgar Macarse was shown by the police to him. Witness testified that several pictures were shown to him and right now he pointed the picture of Edgar Macarse. Several pictures were shown to the witness.

ATTY. DEGUMA:

On August 10, 1990, how many pictures were shown by the police of Cabatuan, Iloilo?

A

Many.

Q

Was it piece by piece or group together?

A

Pictures were laid on the table and I have to point out and identify.

Q

Was it piece by piece or in a separate piece of paper?

FISCAL:

Several bundles were laid on the table.

COURT:

She already answered that pictures were laid on the table. What is your question now?

ATTY. DEGUMA:

Is that picture of Edgar Macarse separated from the pictures of Sumalde and others?

A

Yes, sir.

Q

Whose picture was identified by you first?

A

Edgar Macarse and then that of Sumalde.

....

Q

In the pictures you saw, whom did you identify first?

A

The first picture in the souvenir program shown first by the police to me.

Q

When you saw the picture which was alleged to be that of Edgar Macarse, who supplied to you the name of Edgar Macarse?

A

The police of Cabatuan.

Q

Was the picture with the name printed in said picture or below it?

I will reform. In the said picture was there the name Edgar Macarse printed?

A

No name.

The other eyewitness, Enrico Adelantar, also identified accused-appellant as one of the robbers after he was shown pictures of wanted persons by the Cabatuan police.[16]

Accused-appellant contends that: (1) Enrico Adelantar could not have been a dispatcher as he claimed for he did not know, even by nickname, conductor Joel Binayas; (2) Enrico Adelantar could not have witnessed the robbery

because he was then on top of the jeepney which was overloaded with passengers; (3) Joel Binayas was lying when he stated that he identified accused-appellant on the basis of pictures shown to him by SPO3 Tranquilino Tormon as the latter himself denied having shown him accused-appellant's picture, while PO3 Rodolfo Calusay testified that accused-appellant's picture was not in the gallery of wanted persons; and (4) he had established his defense of alibi, as corroborated by Rene Lorca.[17]

It is true that Adelantar was seated on top of the jeepney when the crime was committed. He could not, however, have failed to notice the commotion that ensued as accused-appellant's group killed the jeepney driver and robbed the passengers as, at this time, the jeepney was in a full stop.

On the other hand, Joel Binayas was at the back of the jeepney. He saw accused-appellant, who announced the hold-up. Accused-appellant shoved him inside the jeepney and took from him the amount of P500.00. There can be no doubt that these witnesses saw accused-appellant. Binayas identified accused-appellant on April 15, 1990, just four days after the incident, hence, his recollection of the faces of the suspects was still fresh. Nor did these witnesses have any motive to falsely implicate accused-appellant in the crime.

SPO3 Tormon denied that he showed any pictures of "wanted" persons to Joel Binayas, while PO3 Calusay said accused-appellant's picture was not in the gallery of "wanted" persons he showed to Binayas. However, SPO3 Tormon admitted the possibility that other police officers might have shown Binayas the pictures. Thus, he testified:

- You know Your Honor, during my term as police commander of Cabatuan, we maintain pictures not only of the persons who have criminal records in our office but pictures of the persons even though he or they were civilians, at the time they would secure a police clearance in our office we require them a picture. With regard to your question, I cannot tell whether there might be some other police men who let him see the picture before I started taking questions on him and reflected in that sworn statement.[18]

That accused-appellant's picture was not in the gallery of "wanted" persons is of no moment because, as admitted by SPO3 Tormon, the police did not just keep pictures of "wanted" persons, but also of other persons who had no criminal record. It is thus possible that accused-appellant's picture was among those persons with no criminal record shown to Binayas. Indeed, neither of the policemen categorically say that Binayas was not shown a picture of accused-appellant.

We are convinced beyond doubt that Joel Binayas and Enrico Adelantar saw accused-appellant as one of those who participated in the commission of the crime on August 10, 1990.

Second. Accused-appellant's alibi has some serious flaws. For alibi to be believed, the following must be shown: (a) presence of accused-appellant in another place at the time of the commission of the offense; and (b) physical impossibility for him to be at the scene of the crime.[19]

In this case, accused-appellant claims that at the time of the commission of the crime, he was at home in Maasin recovering from a shotgun wound in the back. His claim was corroborated by Rene Lorca who said he visited accused-appellant on that day and stayed with him from 5:00 P.M. to 7:00 P.M.

Lorca is accused-appellant's friend and compadre. Between his testimony and those of the prosecution witnesses who had neither motive nor interest in testifying falsely, the testimonies of the latter are to be preferred.

Moreover, Maasin, Iloilo is just the neighboring town of Cabatuan, Iloilo where the offense was committed. It was not shown that accused-appellant could not have gone to Cabatuan because of the shotgun wound he sustained such that he could not have been in Cabatuan at the time of the commission of the crime. The medical certificate presented by accused-appellant indicates that he was hospitalized for gunshot wound from May 4, 1990

to May 10, 1990. On the other hand, the crime was committed on August 10, 1990, a full three months after accused-appellant had been released from the hospital. By then, he could have sufficiently recovered. In fact, he claims that he had drinks with Lorca and the latter's uncle, Emmanuel Malones, when the two allegedly visited him in Maasin.

For the foregoing reasons, we think the trial court correctly rejected accused-appellant's alibi not only because he was positively identified by prosecution witnesses but also because it has not been shown that it was physically impossible for him to have been in Cabatuan at the time of the commission of the crime.

We find, however, the trial court's award of moral damages and loss of earning capacity to be erroneous. The trial court awarded the sum of P30,000.00 to the heirs of Gerry Puniel as moral damages. In accordance with our recent rulings,[20] this amount must be increased to P50,000.00.

With regard to the award for the loss of earning capacity, the trial court used the formula for computing life expectancy adopted in *People v. Quilaton*[21] which recognizes the actuarial experience indicating a longer life expectancy in the Philippines and departs from the formula adopted in the 1970 case of *Villa Rey Transit, Inc. v. Court of Appeals*.[22] However, the formula generally used by this Court[23] for computing life expectancy is that announced in *Villa Rey*, to wit:

$$\begin{aligned} & 2/3 \times [80 - \text{age of deceased}] \\ & 2/3 \times [80 - 24] \\ & 2/3 \times 56 \\ & = 37.33 \text{ years} \end{aligned}$$

At the time of his death, Gerry Puniel had been earning not less than P100 a day. At that rate, he would have a monthly income of P2,000 a month (5 days a week, for 4 weeks) and, consequently, P24,000.00 per year. His unearned income is to be computed using the following formula:[24]

$$\begin{aligned} & \text{Net} \\ & \text{Earning} = \text{Capacity} \\ & \text{Life Expectancy} \times \\ & \text{Gross} \\ & \text{Annual (GAI)} \\ & \text{Income} \\ & - \text{Necessary} \\ & \text{Living} \\ & \text{Expenses} \\ & (50\% \text{ of GAI}) \\ & \text{Unearned Income} = 37.33 \times [P24,000 - P12,000] \\ & = \\ & 37.33 \times P12,000 \\ & = \\ & P447,960.00 \end{aligned}$$

WHEREFORE, the decision of the Regional Trial Court, Branch 39, Iloilo City is **AFFIRMED** with the **MODIFICATIONS** that the award of moral damages is increased to P50,000.00, while the award for unearned income is increased to P447,960.00.

SO ORDERED.

Bellosillo, (Chairman), Quisumbing, Buena, and De Leon, Jr., JJ., concur.

[1] Per Judge Jose G. Abdallah.

[2] Anti-Piracy and Anti-Highway Robbery Law of 1974.

[3] Under P.D. No. 532, the imposable penalty is death. However, as the offense was committed on August 10, 1990, prior to the reimposition of the death penalty on December 31, 1993 under R.A. No. 7659, the trial court imposed on accused-appellant the penalty of reclusion perpetua only.

[4] Rollo, pp. 10-11.

[5] TSN, p. 7, Oct. 5, 1993; TSN, p. 8, March 23, 1993.

[6] TSN, p. 9, Oct. 9, 1993; TSN, p. 15, March 29, 1993.

[7] Id., p. 35.

[8] Exh. 5.

[9] Exhs. 6 and 7; Records, pp. 392-393.

[10] Exh. 8; Id., p. 394.

[11] Id., p. 8.

[12] TSN, pp. 10-11, Dec. 21, 1993.

[13] TSN, p. 6, March 15, 1994.

[14] RTC Decision, p. 8; Rollo, p. 28.

[15] TSN, p. 20, Oct. 9, 1993.

[16] Id., p. 35.

[17] Id., pp. 10-11.

[18] TSN, pp. 10-11, Dec. 21, 1993.

[19] People v. Caisip, 290 SCRA 451 (1998); People v. Ballesteros, 285 SCRA 438 (1998); People v. Magpantay, 284 SCRA 96 (1998).

[20] See People v. Lopez, G.R. No. 119380, August 19, 1999; People v. Verde, G.R. No. 119077, Feb. 10, 1999; People v. Gutierrez, Jr., G.R. No. 116281, Feb. 8, 1999.

[21] 205 SCRA 279 (1992); Life expectancy is based on the 1980 CSO table as follows:

$\text{a} (LX+1, LX=2, \dots, LX + n)$

LX

where

$n = 100 - x$

$x = \text{age upon death}$

L = number of people in sample surviving after x number of years

[22] 31 SCRA 511 (1970)

[23] See *People v. Dizon*, G.R. No. 129893, Dec. 10, 1999; *People v. Lopez*, *supra*.

[24] *Metro Manila Transit Corporation v. Court of Appeals*, 298 SCRA 495 (1998) citing *Negros Navigation Co., Inc. v. Court of Appeals*, 281 SCRA 534 (1997).

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