

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. PROCULO MEJECA Y MONTALLANA, BALDOMERO QUINTINA, ROMEO SOLARTE, DIOSECORO NARCISO, ADELINA NARCISO, NICOLAS PICACHE, JR., JULI...

G.R. No. 146425. November 21, 2002

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

Lita Berlanas, the vault custodian of the Marikina City Branch of the JTC Pawnshop owned by Victoria T. Tuparan, was fatally shot as she tried to flee to safety when several armed men barged into the shop and carted away assorted jewelry worth more or less P3,000,000.00.

Initially charged for the felony were Proculo Mejeca y Montallana, Baldomero Quintina and Romeo Solarte. The corresponding information for Robbery with Homicide was filed on August 15, 1996.[1]

Subsequently, additional suspects were identified. Thus, indicted for the crime in an Amended Information for Robbery in Band with Homicide[2] were: Proculo Mejeca y Montallana, Baldomero Quintina, Romeo Solarte, Diosecoro[3] Narciso, Adelina Narciso, Nicolas Picache, Jr., Julie Hilario, Arnold Narciso and Dante Aras. The amended information alleges –

That on or about the 11th day of July 1996 in the City of Marikina, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, all armed with assorted firearms, conspiring and confederating together and mutually helping and aiding one another, with intent to gain and by means of force, violence and intimidation, did then and there willfully, unlawfully and feloniously enter the premises of JTC Pawnshop and once inside robbed the aforesaid pawnshop of assorted jewelries worth more or less P3,000,000.00; that on the occasion and by reason of said robbery one of the accused with intent to kill, did then and there willfully, unlawfully and feloniously attack, assault and shoot LITA BERLANAS, vault custodian of the said JTC Pawnshop thereby inflicting upon the latter gunshot wounds which directly caused her death.

Contrary to law.

Accused Proculo M. Mejeca, Nicolas Picache, Jr., Adelina Narciso, Romeo Solarte and Baldomero Quintana have, to date, remained at large[4] despite alias warrants of arrest issued against them. Thus, Arnold Narciso, Diosecoro Narciso, Julie Hilario and Dante Aras, who were captured after the incident were the only ones arraigned and pleaded “not guilty” to the crime charged.[5]

The case then proceeded to trial after which, the court a quo rendered judgment, the dispositive portion of which reads:

WHEREFORE, the foregoing premises considered, the Court finds the accused ARNOLD NARCISO guilty beyond reasonable doubt of the crime of Robbery with Homicide penalized under Article 294 (1) of the

Revised Penal Code with the aggravating circumstances of the use of unlicensed firearm and in band and is sentenced to suffer the maximum penalty of DEATH by lethal injection. The said accused is further ordered to pay the heirs of Lita Berlanas the amount of FIFTY THOUSAND (P50,000.00) PESOS as indemnity for the latter's death and to pay the owner of JTC Pawnshop, Victoria Tuparan Manansala, the amount of THREE MILLION FIVE HUNDRED SIXTY THREE THOUSAND SIX HUNDRED FORTY FIVE (P3,563,645.00) PESOS representing the value of the pieces of jewelry that were taken from the pawnshop subject of the robbery. The other accused DIOSECORO NARCISO, JULIE HILARIO and DANTE ARAS are hereby ACQUITTED of the crime charged against them for failure of the prosecution to prove their guilt beyond reasonable doubt and are ordered released from the custody of the Marikina City Jail unless validly held for some other offense. The case against the other accused who remain at large is ordered archived and let a warrant of arrest be issued against them.

SO ORDERED.[6]

On automatic review before this Court, accused-appellant Arnold Narciso assails the imposition of the supreme penalty of death against him alleging that –

I

THE TRIAL COURT ERRED IN GIVING WEIGHT AND CREDENCE TO THE IMPROBABLE TESTIMONY OF PROSECUTION EYEWITNESS NANCY ALEGRE

II

THE TRIAL COURT ERRED IN NOT ACQUITTING THE ACCUSED-APPELLANT ON THE GROUND OF REASONABLE DOUBT.

From the prosecution's version of the incident, as summarized in the People's brief, it appears that on July 11, 1996, Nancy "Ancy" Alegre, then an appraiser employed by the JTC Pawnshop, owned and operated by Victoria Tuparan-Manansala, left the pawnshop's Cogeo-Antipolo branch, around 5:30 in the afternoon and proceeded to the main branch at Bayan-bayanan Avenue, Concepcion, Marikina City to submit her report to Lita Berlanas and to Edna Escabe, employees of the main branch. She arrived at the main branch between 6:30 and 7:00 in the evening.

When she was about five steps from the entrance of the main branch, she saw a man in front of the pawnshop, brandishing a gun in his right hand while holding Lita Berlanas by her nape with his left hand. She later identified this man as accused-appellant Arnold Narciso.

Bystanders advised Ancy not to proceed to the pawnshop warning her, thus: "Miss, huwag ka nang tumuloy, may hold-apan." Alerted to the danger, she then went to other side of the road near a 7-11 Convenience Store to observe what was going on. She heard several gunshots fired inside the pawnshop. She saw Arnold fire the gun upwards and towards the street. After the gun was fired, Lita Berlanas ran and Arnold shot her. Several men, numbering about four, including Arnold, ran out of the pawnshop. One of the men, who was also carrying a gun, manned the traffic. The four men commandeered a Tamaraw FX vehicle and boarded it.

Ancy then rushed towards the pawnshop where she found Edna Escaba hiding under the sink. She proceeded towards the side of the pawnshop and found the lifeless body of Lita Berlanas. All the pawned items were gone. At that point, Ancy lost consciousness and was brought to the hospital.[7]

The pawnshop's owner, Victoria Tuparan-Manansala, arrived at the scene of the crime after the robbery. She had just come from their branch on Molave Street, where she inspected the pawned items. She received a message on

her pager that there was a robbery at the main branch and that Lita Berlanas was gunned down. She rushed to the site where she saw barangay officials carrying Lita Berlanas' body out of the shop. She found that all the items in the pawnshop were taken.[8] The value of the items taken from the pawnshop amounted to more or less Four Million Pesos (P4,000,000.00).

Almost two years later, in January 1998, the pawnshop's Karuhatan-Valenzuela branch was robbed at gunpoint. The suspects were caught and brought to Camp Crame where the employees of the JTC Pawnshop, Ancy and a certain Edera, identified them as the same persons who committed the July 11, 1996 robbery of the pawnshop's Marikina branch. They were identified as accused Diosecoro Narciso, Dante Aras, Arnold Narciso and Julie Hilario.[9] Accused-appellant Arnold Narciso was arrested and detained.

On the other hand, accused-appellant had a different story to tell. He denied any participation in the crime and alleged that on July 11, 1996, he was in his residence in Bagong Nayon II, Antipolo City, digging a well. He asserted that the claim of Ancy Alegre that it was he who took Lita Berlanas hostage was a "big lie." He pointed out that when Ancy first testified, she identified the person on the cartographic sketch as Baldomero Quintana. However, she later declared that it was accused-appellant who was depicted on the sketch. He also claimed that Ancy may have singled him out because among the four accused, he was the only one who was the most vocal in court. He denied knowledge of the location of the Marikina Branch of JTC Pawnshop. He claimed that he only found out where it was situated when he was indicted and detained in Marikina.[10] He further testified that the distance between the pawnshop and the 7-11 Convenience Store where Ancy allegedly stood was approximately 35-40 meters.[11] The JTC Pawnshop is facing the church while the convenience store is facing Bayan-bayanan Avenue.[12]

Accused-appellant alleged that on January 24, 1998, while he was in his house in Bagong Nayon II, Antipolo City tending to his child and nephew, two men in civilian clothes arrived. One of the men stood in front of the house while the second who was in shorts with a long firearm approached him and asked him if he was the brother of Diosecoro Narciso. When he answered affirmatively, the man suddenly struck him on his stomach with the butt of the gun. He was then pushed to the ground, handcuffed behind his back, blindfolded and brought to a vehicle. He learned for the first time that he was being implicated in the robbery when he was detained in Valenzuela.[13]

Accused-appellant insists that he was not positively identified by eyewitness Ancy Alegre. He argues that Ancy could not have seen his face as she described him as "sporting long hair with dark brown complexion," therefore "it is highly probable that the witness could not have clearly seen the face of the man as the latter's face may have been covered by his long wavy hair." He also makes capital of the fact that Ancy did not describe his features to the police-investigator/cartographer, implying that had she really been familiar with his face, other sketches need not have been shown to her. He further argues that he is not the only one among the accused with "medium build, dark complexion, sporting long wavy hair," inasmuch as his co-accused, Baldomero Quintana, also fits that description and, thus, Ancy may have mistaken him for Quintana.[14]

In fine, accused-appellant raises the issue of credibility. He assails the assessment by the trial court of the witnesses' testimonies in regard to his identification as one of the perpetrators of the offense charged.

Matters concerning the credibility of the witnesses are best addressed to the sound judgment of the trial court.[15] It is well-settled that appellate courts will not interfere with the trial court's assessment in this regard, absent any indication or showing that the trial court has overlooked some material facts of substance or value or gravely abused its discretion.[16] The matter of assigning values to declarations at the witness stand is best and most competently performed or carried out by a trial judge who, unlike appellate magistrates, can weigh such testimony in the light of accused's behavior, demeanor, conduct and attitude at the trial.[17]

In this connection, we note in particular accused-appellant's positive identification by eyewitness Ancy Alegre, who testified on direct examination as follows:

PROSECUTOR

Q You said earlier that there were five men whom you saw participated in the incident which you witnessed on July 21, if you will again see this group of men, will you be able to identify them?

A Yes, sir.

Q Will you please look inside this courtroom and point to us if they are here or if any of the five men are inside this courtroom?

A Yes, sir.

Q Will you step down and tap the shoulder or you can come close to them and point to them?

A THE WITNESS POINTING TO A PERSON INSIDE THE COURTROOM.

COURT

The person pointed to by the witness, stand up and identify yourself.

ACCUSED

I am ARNOLD NARCISO Your Honor.

PROSECUTOR

Q How about the four others?

A I do not know, sir.

Q If you again see them will you be able to identify them?

A No, sir. Because I did not see their faces, sir.

Q Insofar as the incident of July 21, 1996 is concerned which you just narrated to us, what was the exact participation of the man you earlier pointed to and identify himself as Arnold Narciso?

A He was the man standing at the door of the pawnshop, sir.

Q And also the man who shot Lita Berlanas?

A Yes, sir.

Q And also one of the men who came out of the pawnshop?

A Yes, sir.[18]

There were attempts by defense counsel to impeach Ancy's credibility on cross-examination by dwelling on what was perceived to be a vague description of accused-appellant and the supposed darkness and poor visibility, but they only succeeded in eliciting the opposite response:

ATTY. LARRACAS

Q When you said Miss Witness that when you were about to go in the pawnshop at JTC Pawnshop in Concepcion, Marikina City, bystanders shouted to you that there was a hold-up. You said that you did not go inside the pawnshop. My question is. How far is the other side of the street from the pawnshop?

A From my seat up to the door of the courtroom, ma'am.

PROSECUTOR

May we ask that the question be clarified to this witness?

COURT

It is noted.

ATTY. LARRACAS

You Honor, can we just stipulate. . .

PROSECUTOR

We can say 6 vehicles can accommodate the entire width.

COURT

It is a judicial notice.

ATTY. LARRACAS

Q And the incident happened at about between 6:30 and 7:00 in the evening, you will agree with me that at that time it was quite dark or it was already dark at that time?

A It was dark but in our place it was lighted, ma'am.[19]

What, however, spelled finis to accused-appellant's pretensions of innocence are the following declarations of Ancy Alegre on re-direct examination:

Q Miss Witness, you earlier identified Arnold Narciso as the one whom you saw standing in front of the pawnshop at the time of the incident and who was then holding the nape of Lita Berlanas, how certain are you that you pointed to that man whom you saw as the one holding Lita Berlanas in her nape?

A Because I could not forget his face, sir.

Q Are you one hundred percent sure that the man you pointed to is Arnold Narciso?

A Yes, sir.

Q In my previous question, you specifically identified Arnold Narciso as the one who fired at Lita Berlanas. On cross-examination when you were asked by the counsel de oficio, you stated that because there were several shots fired, you can no longer distinguish which shot hit Lita Berlanas, will you tell which between the two answers is correct?

A I saw his shot (sic) Lita Berlanas, sir.

Q Miss Witness, you were earlier confronted with the description of the man as mentioned by counsel de oficio, who is 5'6" to 5'7" in height, weighing 140-150 lbs., medium built with dark complexion, long wavy hair, is this person that you described in your statement the same as Arnold Narciso as you have pointed now?

A Yes, sir.[20]

The trial court rejected accused-appellant's defense which consisted mainly of denial and alibi. Ancy Alegre placed him at the scene and time of the robbery and saw him shoot Lita Berlanas. In convicting accused, the trial court relied on Ancy's testimony which it found to be "clear and straightforward." [21] Such positive testimony

prevails over accused-appellant's denial and alibi.[22]

Furthermore, as established at the trial, Ancy Alegre had no ulterior motive to falsely testify against accused-appellant whom she has never met prior to the robbery. Categorical and consistent positive identification, absent any showing of ill-motive on the part of the eyewitness testifying on the matter, prevails over accused-appellant's defense of denial and alibi. Unless substantiated by clear and convincing proof, such defense is negative, self-serving and undeserving of any weight in law.[23]

All told, we find no reason to reverse the ruling of the court a quo insofar as accused-appellant's culpability is concerned. This brings us to the propriety of the imposition of the death penalty against him.

Article 294 of the Revised Penal Code, as amended by R.A. No. 7659, provides that:

ART. 294. Robbery with violence against or intimidation of persons. – Penalties. – Any person guilty of robbery with the use of violence against or intimidation of any person shall suffer:

- The penalty of reclusion perpetua to death, when by reason or on occasion of the robbery, the crime of homicide shall have been committed, or when the robbery shall have been accompanied by rape or intentional mutilation or arson; xxx.

In meting out the supreme penalty of death, the trial court appreciated the special aggravating circumstance of use of an unlicensed firearm under Section 1, paragraph 3, of R.A. No. 8294.

The imposition of the death penalty is infirm for several reasons:

First, R.A. No. 8294 took effect on July 6, 1997, fifteen days after its publication on June 21, 1997. The crime imputed to accused-appellant was committed on July 11, 1996. It is fundamental that laws shall have no retroactive effect, unless the contrary is provided.[24] More importantly, penal laws are construed liberally in favor of the accused.[25] Thus, insofar as R.A. No. 8294 is not beneficial to the accused because it unduly aggravates the crime, such new law will not be given retroactive application, lest it acquire the character of an ex post facto law.[26] Stated differently, R.A. No. 8294, which considers the use of an unlicensed firearm in the killing of a victim as an aggravating circumstance, cannot be given retroactive effect because to do so would be unfavorable to the accused.[27]

Second, inasmuch as the use of an unlicensed firearm is now considered as a special aggravating circumstance[28] which would merit the imposition of the supreme penalty of death, the same must be specifically alleged in the information. The amended information in this case alleges, inter alia, that –

. . . the above-named accused, all armed with assorted firearms, conspiring and confederating together and mutually helping and aiding one another, with intent to gain and by means of force, violence and intimidation, did then and there willfully, unlawfully and feloniously enter the premises of JTC Pawnshop and once inside robbed the aforesaid pawnshop of assorted jewelries worth more or less P3,000,000.00; that on the occasion and by reason of said robbery one of the accused with intent to kill, did then and there willfully, unlawfully and feloniously attack, assault and shoot LITA BERLANAS, vault custodian of said JTC Pawnshop, thereby inflicting upon the latter gunshot wounds which directly caused her death. xxx

The use of an unlicensed firearm in the commission of murder or homicide is a qualifying circumstance. Following the well established rules pertinent to this issue, the imposition of capital punishment on accused-appellant is improper absent the express allegation of such qualifying circumstance,[29] otherwise it would violate his right to be informed of the nature and cause of the accusation against him.[30]

Third, two (2) requisites are necessary to establish illegal possession of firearms: first, the existence of the subject

firearm; and second, the fact that the accused who owned or possessed the guns did not have the corresponding license or permit to carry it outside his residence.[31] Given the prevailing facts of this case, it becomes readily apparent that these elements are absent herein. With regard to the first element, it must be noted that the murder weapon was never presented in evidence as it was not confiscated by the police. There was, therefore, no opportunity to prove that the accused-appellant used an unlicensed firearm.[32]

As for the second element, it bears stressing that the essence of the crime penalized under P.D. No. 1866, as amended, is primarily the accused's lack of license or permit to carry or possess the firearm, as possession by itself is not prohibited by law.[33] As such, it is the duty of the prosecution not only to allege it but also to prove it beyond reasonable doubt.[34] In this regard, either the testimony of a representative of or a certification from the Philippine National Police Firearms and Explosives Office attesting that a person is not a licensee of any firearm would suffice to prove beyond reasonable doubt the second element.[35] There, likewise, has been no such proof to show the existence of such element herein.

Likewise, the generic aggravating circumstance of cuadrilla (band) can not be appreciated in this case. An offense is deemed to have been committed by a band where more than three armed malefactors acted together in the commission thereof.[36] As stated, the prosecution failed to establish with certainty that all the perpetrators of the robbery, numbering four, were armed as no such weapons were presented in evidence.[37]

There being neither aggravating nor mitigating circumstances, the proper imposable penalty is reclusion perpetua, the lower of the two indivisible penalties.[38]

WHEREFORE, in view of the foregoing, the appealed decision of the Regional Trial Court of Marikina City, Branch 272, finding accused-appellant Arnold Narciso guilty beyond reasonable doubt of the crime of Robbery with Homicide and ordering him to pay the amount of P50,000.00 as civil indemnity to the heirs of the deceased, Lita Berlanas, and the amount of Three Million Five Hundred Sixty-Three Thousand Six Hundred Forty-Five Pesos (P3,563,645.00) as actual damages to Victoria Tuparan, the owner of the JTC Pawnshop, is AFFIRMED with the MODIFICATION that the penalty imposed by the trial court on accused-appellant is reduced to Reclusion Perpetua.

Costs de officio.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Puno, Vitug, Mendoza, Panganiban, Quisumbing, Sandoval-Gutierrez, Carpio, Austria-Martinez, Carpio-Morales, Callejo, Sr., and Azcuna, JJ., concur.
Corona, J., on official leave.

[1] Record, p. 1.

[2] Ibid., pp. 54-55.

[3] Also referred to as Dioscoro Narciso.

[4] Id., p. 35.

[5] Id., pp. 133-135.

[6] Id., pp. 262-280.

[7] TSN, September 29, 1999, pp. 6-29.

- [8] TSN, June 9, 1999, pp. 14-24.
- [9] TSN, June 9, 1999, pp. 35-39.
- [10] TSN, February 8, 2000, pp. 3-6.
- [11] *Ibid.*, p. 6.
- [12] Exhibit I.
- [13] TSN, February 8, 2000, pp. 9-10.
- [14] Appellant's Brief, pp. 12-13.
- [15] *People v. Escala*, 292 SCRA 48, 59 [1998].
- [16] *People v. Sabalones*, 294 SCRA 751, 781 [1998].
- [17] *People v. Boquirin*, G.R. No. 136829, June 6, 2002, citing *People v. Daroy*, 336 SCRA 24, 37 [2000].
- [18] TSN, September 29, 1999, pp. 30-32; emphasis and italics supplied.
- [19] *Ibid.*, pp. 42-44; emphasis and italics supplied.
- [20] *Id.*, pp. 48-51; emphasis and italics supplied.
- [21] RTC Decision, p. 16; Record, p. 276.
- [22] *People v. Erlinda Dela Cruz, et al.*, G.R. Nos. 141162-63, July 11, 2002; *People v. Ballesteros*, 285 SCRA 438, 446 [1998].
- [23] *People v. Basquez*, G.R. No. 144035, September 27, 2001.
- [24] Civil Code, Art. 4.
- [25] *People v. Ladjaalam*, 340 SCRA 617.
- [26] *People v. Macoy*, 338 SCRA 217 [2000]; *People v. Ringor*, 320 SCRA 342 [1999]; *People v. Valdez*, 304 SCRA 311 [1999].
- [27] *People v. Valdez*, 347 SCRA 594 [2000].
- [28] *People v. Castillo*, 325 SCRA 613 [2000].
- [29] *Dela Peña v. Empaynado, Jr.*, 346 SCRA 6, 12 [2000].
- [30] *People v. Evangelista*, 256 SCRA 611, 626 [1996]; *People v. Fernandez*, 239 SCRA 174 [1994]; *People v. Barte*, 230 SCRA 401 [1994].
- [31] *Advincula v. CA*, 343 SCRA 583 [2000]; *Cadua v. CA*, 312 SCRA 703 [1999].
- [32] *People v. Abendan*, 341 SCRA 404 [2000].
- [33] *People v. Cortez*, 324 SCRA 335 [2000].
- [34] *People v. Dorinon*, 321 SCRA 43 [2000].
- [35] *People v. Lazaro*, 317 SCRA 435 [1999]; *Cadua v. CA*, *supra*.
- [36] Revised Penal Code, Art. 14 (6).

[37] People v. Viñalon, et al., G.R. No. 135542, July 18, 2002.

[38] People v. Cachola, G.R. No. 135047, March 16, 2001, citing People v. Lozada, 334 SCRA 602, 623 [2000].

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