

THIRD DIVISION

[G.R. No. 124128, November 18, 1997]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROMAN TAGOLIMOT ALIAS "OMEK", APOLONIO ENORME, ELVIS FUNDAL, RODRIGO GARDOCE, ROBERTO SAYMAN ALIAS "BERT", JOSE IGNACIO ALIAS "DODONG", AND ALIAS "ROMY", ACCUSED AND RODRIGO GARDOCE, ACCUSED-APPELLANT.

D E C I S I O N

MELO, J.:

On appeal is the decision of the Regional Trial Court of the 11th Judicial Region (Branch 22, General Santos City) in its Criminal Case No. 7465, with accused-appellant averring that said decision which found him guilty beyond reasonable doubt of the crime of robbery with homicide and frustrated homicide, is wrong. The appeal must fail, there being no reversible error committed by the trial court except for the designation of the offense which should properly be robbery with homicide.

The initial criminal complaint charged Apolonio Enorme, Roman Tagolimot, "John Doe", and "Peter Doe" with robbery with homicide and slight illegal detention. During the course of the investigation, Mary Ann Velayo, one of the victims, further identified Elvis Fundal as the one who shot her, and accused-appellant Rodrigo Gardose (or Gardoce, as sometimes spelled in the record) as the one who stood watch. The complaint was thus amended to include both men. Following implicatory statements by a witness and accused Enorme, three other persons, Roberto Sayman, Jose Ignacio, and a certain "Romy" were included in the final complaint (pp. 6, 18-19, 40-43, Record). The Information thus recites:

That on or about 10:30 o'clock in the morning of April 29, 1991, at Makar, Labangal, General Santos City, within the jurisdiction of this Honorable Court, the above-named accused, with intent of gain, and by means of intimidation and violence upon persons, conspiring, confederating and mutually helping one another to attain a common purpose, without the consent of the owner thereof, did then and there willfully, unlawfully and feloniously take and carry away cash money and bank checks amounting to One Hundred Thirty Five Thousand Pesos (P135,000.00), more or less, owned by Asia Brewery, Inc. to the damage and prejudice of said owner in the said total sum which at the time of the robbery, was in the possession of Mary Ann Velayo, a duly appointed cashier of said company, and who was on board a panel truck with Plate No. PEY 877, driven by Ernesto Vasquez and drove the aforementioned vehicle to Dole Pineapple Plantation, Polomolok, South Cotabato and while thereat, accused, by reason of said robbery, in pursuance to their conspiracy, did then and there willfully, unlawfully and feloniously with evident premeditation and taking advantage of their number and strength and with intent to kill, treacherously attack, assault and shoot

Ernesto Vasquez who was wounded and died as a consequence; that likewise, herein accused, also by reason of said robbery, did then and there willfully, unlawfully and feloniously, with intent to kill, shoot Mary Ann Velayo who sustained, as a consequence, injuries which would heal in about six (6) to eight (8) months time, and would have caused her death, but it did not, by reason independent of the will of the accused, that is, the timely medical assistance accorded to her.

CONTRARY TO LAW

(pp.1-2, Ibid.)

Accused Tagolimot and "Romy" were not apprehended. The rest pleaded not guilty during arraignment (p.65, Ibid.). In the course of the trial, Enorme, succumbing to tetanus, died in prison (pp. 73-75, Ibid.). Accused Fundal meanwhile entered another plea, this time acknowledging his guilt in exchange for a lighter sentence. The prosecution agreed to the plea bargain and Fundal was correspondingly sentenced to reclusion temporal, with civil liabilities to be determined at the trial (pp. 118, 120, Ibid.). The expenses for Vasquez's funeral amounting to P20,000.00 and hospital expenses incurred by Velayo totaling P15,349.80 were admitted during trial. The determination of the amount of moral damages to be awarded to the heirs of Vasquez, also by submission of accused Sayman, Ignacio, Fundal and accused-appellant Gardose, was left to the trial court's discretion (p. 106, tsn, March 23, 1992; pp.109-110, tsn, March 24, 1992). The assailed decision was thereafter rendered by the trial court disposing of the case thusly:

ACCORDINGLY, finding the accused Rodrigo Gardose guilty beyond reasonable doubt of the crimes of robbery with homicide and frustrated homicide, he is hereby sentenced to RECLUSION PERPETUA. The accused Roberto Sayman and Jose Ignacio are exonerated for insufficiency of evidence. Elvis Fundal who pleaded guilty earlier and who was penalized with RECLUSION TEMPORAL and Rodrigo Gardose are jointly and severally adjudged to indemnify the heirs of the deceased Ernesto Vasquez P20,000.00 in actual damages and P50,000.00 for his death; P15,349.80 for compensatory damages to Mary Ann Velayo. They are also held solidarily liable to Asia Brewery, Inc. in the amount of P113,000.00, plus costs.

(p. 132, Record.)

The relevant factual antecedents, as established by the sole eyewitness Mary Ann Velayo, are as follows:

At around 11:30 o'clock on the morning of April 29, 1991, Ernesto Vasquez, driver, and Mary Ann Velayo, cashier, both of Asia Brewery, Inc. were on their way to Allied Bank in General Santos City on board a company Mitsubishi truck bearing Plate No. PEY 877. She had with her a total of P135,000.00, some P113,000.00 of which were in cash and another P18,000.00 in checks with their accomplished deposit slips. Some 50 to 60 meters from Asia Brewery's compound at Makar, there was a man standing on the middle of the road. Vasquez slowed down to avoid running him over. Suddenly, the man, later identified as Tagolimot, hopped on the truck, opened the driver's door, pulled out a gun, and pointed it at the driver. Two more persons then approached and boarded the vehicle, Enorme on the left and Fundal, who was

armed with a knife, on the right side. Vasquez and Velayo were forced to crouch on the floor. Enorme then took over the wheel and drove the truck towards the highway. Vasquez and Velayo were assured that the robbers were only after the money, after which, on demand of Fundal, Velayo handed over the cash and checks contained in a brown envelope (pp. 128-129, Ibid.).

Enorme exited from the highway onto a dirt road. When the vehicle stalled, Vasquez and Velayo were ordered to get down from the truck. Three of the robbers also alighted. Velayo noticed another person, whom she later identified as accused-appellant Gardose, at the back of the vehicle. After being ordered by Enorme, Vasquez and Velayo ran towards a pineapple plantation. She then heard somebody shout, "Why did you allow them to run?" Enorme, with gun in hand, then chased Vasquez and fatally shot him. Velayo saw Vasquez fall face down. Enorme then gave the gun to Fundal who approached Velayo. Fundal reloaded the gun and from a distance of about one and one-half meters pointed it at her. Velayo pleaded that she be shot only in the leg. She saw Fundal point the gun at her legs, change his aim to her face and shoot. Fortunately, only her wrist was hit but wisely, she feigned death. All the accused then fled on board the stolen truck (p. 129, Ibid.).

With the robbers gone, Velayo got up and flagged down a passing Ford Fiera. She pleaded with the Fiera's occupants that they first attend to Vasquez who might still be alive but they decided to bring her first to the Howard Hubbard Hospital in Polomolok, South Cotabato after promising her that they will take care of Vasquez. Velayo was treated for her wounds and was subsequently transferred to the Doctor's Hospital in General Santos City where she had to be confined for ten days (p. 129, Ibid.).

In seeking acquittal, accused-appellant Gardose is of the opinion that Velayo failed to positively identify him as one of the conspirators. In support of this, he calls attention to the following testimony of Velayo, to wit:

Atty. Torres:

Q: How many times did you look at Gardose from the moment you observed him to be around?

A: Only once, sir, when I passed by him at the back.

Q: And when you looked at him once, it was not a long look, is that correct?

A: No, sir.

Q: It was in a split second when you looked at him?

A: Just like that, sir.

Q: And he was not facing you when you looked at him, is that correct?

A: I saw his profile.

Q: Of course, you did not notice the color of his shirt?

A: No, sir.

Q: That is because you were so afraid at that time?