

EN BANC

[G.R. No. 134815, May 27, 2004]

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. EDUARDO DE JESUS Y ENRILE, APPELLANT.

DECISION

PER CURIAM:

This is an automatic review of the Decision^[1] of the Regional Trial Court of Makati, Branch 64, convicting the appellant of robbery with homicide and sentencing him to suffer the death penalty.

The Case for the Prosecution

SPO3 Eugenio Ybasco was a policeman assigned to the Makati Police Station, Substation Block No. 6 since March 16, 1973.^[2] After his tour of duty, he worked on the sly for a money changer in the vicinity of the Intercontinental Hotel and the Rustan's Supermarket in Makati City. He delivered money for his employer every afternoon. The money was placed in a plastic bag^[3] and he used a bicycle for this extra job.^[4] Everytime Ybasco delivered money to his employer, he passed by Yolanda dela Rapa who was selling cigarettes in the vicinity of the Rustan's Supermarket and the Kimpura Restaurant, Ayala Center, Makati City.^[5] Ybasco was a familiar face among the other cigarette vendors in the area, namely, Lydia, Gina, Jing and Romy.^[6] Dela Rapa called him "Sir Ybasco."^[7]

Sometime in February 1994, Dante Manansala, a native of Barangay Canlubang, Calamba, Laguna,^[8] appellant Eduardo de Jesus, a native of Barangay Tabuyok, Apalit, Pampanga,^[9] and Crispin Del Rosario, the appellant's brother-in-law^[10] and a native of Barangay Tadloc, Los Baños, Laguna,^[11] agreed to stage a robbery in the afternoon of March 7, 1994. On February 15, 1994, the appellant told Del Rosario of the planned robbery.^[12] Del Rosario was told that the financier for the heist was Christopher Nash, a British national residing in the Philippines.^[13] The appellant knew that Ybasco was to deposit US\$250,000 in the bank every afternoon for his employer. They decided to waylay Ybasco on his way to the bank.

At 8:00 a.m. on March 7, 1994, upon Nash's instructions, Del Rosario and the appellant took a Toyota Corolla car with Plate No. TAX 732 from Rolando Fajardo in Tanauan, Batangas. The car was owned by Nash.^[14] While the appellant, Del Rosario and Manansala were on board the car, their confederate, Tonton, had lunch somewhere in Batangas. The group arrived in the vicinity of the parking lot at the Ayala Center near the Rustan's Supermarket and the Kimpura Restaurant on board the same car.^[15] The appellant was armed with a caliber .45 handgun.^[16] Manansala, the appellant and Del Rosario alighted, and conducted a surveillance of

the area. Tonton remained in the car. Manansala instructed Del Rosario to position himself as a lookout at the corner of the Rustan's Supermarket, and for the appellant to position himself within the vicinity.^[17] Manansala waited Ybasco near the office of the money changer. Dela Rapa, who was then vending cigarettes, was about five arm's length away from the car.^[18]

At around 6:30 p.m., Ybasco emerged from the office of his employer holding a plastic bag. Manansala contacted Del Rosario and told him that Ybasco was on his way out. He reminded Del Rosario to be on the lookout for anybody who might rush to the succor of Ybasco, while the appellant would take care of Ybasco. Momentarily, Manansala and the appellant confronted Ybasco and told him, "*May warrant of arrest ka.*" They grabbed Ybasco, handcuffed him and dragged him to the car.^[19] Manansala and the appellant had a scuffle with Ybasco when they grabbed the plastic bag from him.^[20] Roberto Acosta, a roving security guard, saw the incident and pulled out his .38 caliber gun with Serial No. 172410. On board his motorbike, he sped towards the scene to investigate the incident. Del Rosario confronted Acosta and grappled with him for the possession of the gun.^[21] As Del Rosario managed to wrest possession of the gun from Acosta, Manansala ordered Del Rosario to shoot. Del Rosario did as he was told, and shot Acosta in the mouth. They boarded the car, and sped towards EDSA.^[22] Dela Rapa was shocked at the sudden turn of events.^[23] So was Juanito Mendoza, who had just stepped out from the Rustan's Supermarket and saw the shooting incident.^[24]

Wilfredo Delia, another security guard at the Ayala Center, rushed to Acosta's aid and brought him to the Makati Medical Center. Acosta expired at about 10:10 p.m.^[25]

Meanwhile, the Toyota Corolla sped towards the direction of Cabuyao, Laguna. Manansala said that they would have no problem because the mayor was his *ninong*.^[26] However, when he looked inside Ybasco's bag and found that it only contained P5,000 instead of the expected US\$250,000, he was enraged. Manansala hit Ybasco on the nape and uttered invectives at the latter. Ybasco explained, "*Eh wala naman akong idinedeliber mga anak na ganyan kalaking pera.*" Manansala took the P5,000 from Ybasco.^[27]

Ybasco was transported to a sugar farm at Barangay Pulo, Cabuyao, Laguna. Manansala and the appellant took him out of the car and told him that he would be allowed to board a tricycle. The appellant warned Ybasco not to follow them, as he, (the appellant) was a member of the New People's Army. Believing that Ybasco would be freed, Del Rosario took P80 from the latter's wallet, but returned P50 to him for his fare.^[28]

The appellant suddenly shot Ybasco on the head. The latter fell to the ground with his hands still handcuffed.^[29] Manansala, the appellant and Del Rosario proceeded to Calamba, Laguna, where Del Rosario alighted after receiving P100 from the appellant for his fare.^[30] The appellant explained that the remaining P4,900 would be used for the repair of the car.

In the meantime, police operatives from the Makati Police Station, including SPO4

Tomas Sipin and SPO1 Ramoncito Ocampo, arrived at the Ayala Center to conduct an on-the-spot investigation of the killing of Acosta and Ybasco's abduction.^[31] When Dela Rapa informed the policemen that she witnessed the incident, she was brought to the police station where she gave a sworn statement.^[32] At 8:10 p.m., Juanito Mendoza arrived at the Makati Police Station and gave a sworn statement where he indicated that he witnessed the shooting incident and saw the get-away car, a Toyota Corolla with Plate No. TAX 732. He also gave a physical description of Acosta's assailant.^[33]

At 6:20 a.m. of March 8, 1994, Sofronio Entridicho was at his sugar field and saw the cadaver of Ybasco whose hands were still handcuffed.^[34] Entridicho reported what he saw to the Cabuyao Police Station.^[35] SPO2 Reynaldo Arcibal of the Cabuyao Police Station reported the finding to the Makati Police Station which dispatched a team of police investigators to Barangay Pulo, Cabuyao, Laguna. The policemen found Ybasco's body and an empty shell from a .45 caliber pistol.^[36]

In the meantime, the policemen were able to ascertain that the Toyota Corolla car with Plate No. TAX 732 belonged to Cecilia Tan and her husband Christopher Nash, and that the latter gave the car keys to Rolando Fajardo for car repairs, with instructions to turn it over later to Del Rosario and the appellant.^[37] On March 9 and 10, 1994, Rolando Fajardo gave sworn statements^[38] to the Makati Police Operatives where he stated that at 8:00 a.m. of March 7, 1994, he turned over the car to the appellant and the latter's brother-in-law, Del Rosario. Fajardo also stated that at 9:00 a.m. of March 8, 1994, Manansala told him how Ybasco was abducted and brought to Cabuyao, Laguna, where he was shot by the appellant.

On March 9, 1994, police operatives arrested Del Rosario at his residence in Barangay Tadloc, Los Baños, Laguna.^[39] Del Rosario tried to shoot it out with the policemen using Acosta's service pistol, a .38 caliber revolver which had six live ammunitions, bearing serial number 172410.^[40] The gun was turned over to SPO2 Marlon Binotapa at the homicide section of the Makati police department.^[41] On the same day, Manansala was arrested at his residence in Barangay Canlubang, Laguna.

On March 12, 1994, Manansala, with the assistance of his counsel, Atty. Sofronio Untalan, Jr., executed an extrajudicial confession in which he narrated how he, the appellant, Del Rosario and Nash, planned to rob Ybasco of the cash he was carrying, including the details of the abduction and the killing.^[42] The policemen attempted to arrest the appellant at his residence, but the latter was nowhere to be found. The appellant remained at large.^[43]

Tanauan Police Operatives found the white Toyota Corolla with Plate No. TAX 732 in Tanauan, Batangas.^[44] The car was turned over to SPO2 Romeo Urbino of the Makati Police Station, who discovered that the said plate number was tampered with and renumbered PTT 134.

From a police line-up of ten persons formed by the Makati Police Station, which included Del Rosario, Dela Rapa was asked to identify Acosta's killer and Ybasco's abductors. Dela Rapa pointed to and positively identified Del Rosario as Acosta's assailant. Dela Rapa gave a supplemental statement^[45] pointing to and identifying

Del Rosario as the person whom she saw boarding a white car.^[46]

In the meantime, PNP Medico-Legal Officer Joselito Rodrigo performed an autopsy on the cadaver of Ybasco and issued Medico-Legal Certificate No. M-006-94 which contained the following findings:

Well-nourished, well-developed male cadaver in rigor mortis with postmortem lividity over the dependent portions of the body. Pale conjunctivae, cyanotic lips and nailbeds. Both upper extremities were handcuffed.

HEAD AND EXTREMITIES

1. Gunshot wound thru and thru point of entry right zygomatic region measuring 0.9 x 1.2 cms., 10 cms. from its anterior midline with area of smudging and tattooing measuring 4 x 7 cms. directed posteriorwards, slightly downwards and to the left fracturing the right zygomatic bone, maxillary bone, and occipital bone making a point of exit at the posterior neck region measuring 1 x 1.2 cms., 2.5 cms. from its posterior midline.

CONCLUSION:

Cause of death is hemorrhage as a result of gunshot wound of the head.
^[47]

The doctor also issued the victim's Certificate of Death.^[48]

On May 19, 1995, Del Rosario and Manansala were charged with robbery with homicide in an Information, the accusatory portion of which reads:

That on or about March 7, 1994, in the Municipality of Makati, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating with Eduardo de Jesus y Enrile alias "Eddie," Christopher John Nash and one alias "Ton Ton" whose real name and present whereabouts are still unknown and all of them mutually helping and aiding one another, with intent of gain and by means of force, violence and intimidation, to wit: dragging, shoving and pushing inside a Toyota Corolla car, colored white with Plate No. TAX-732 one SPO2 Eugenio Ybasco, did then and there willfully, unlawfully and feloniously take, steal and carry away the following:

- 1) One (1) Cal. 38 revolver Smith & Wesson, with Serial No. AUB-1015;
- 2) *Id.*entification Cards;
- 3) One (1) wallet containing P5,000.00 cash.

belonging to the said SPO2 Eugenio Ybasco, against his will, to the damage and prejudice of the said SPO2 Eugenio Ybasco and/or his heirs and thereafter, the above-named accused, after handcuffing both hands

of the said SPO2 Eugenio Ybasco, with intent to kill, did then and there willfully, unlawfully and feloniously, shoot and fire at him with a handgun, thereby inflicting upon the latter a mortal wound which was the direct and immediate cause of his death; that on the occasion of the aforesaid robbery committed on SPO2 Eugenio Ybasco, the above-named accused, did then and there, willfully, unlawfully and feloniously shoot and fire at, with a handgun, one Roberto Acosta y Capirao, a roving security guard detailed at the Ayala Center, who came to the rescue of SPO2 Eugenio Ybasco, thereby inflicting upon him a serious mortal wound which directly caused his death.

CONTRARY TO LAW.^[49]

Del Rosario was arraigned on April 5, 1994, assisted by counsel, and pleaded guilty to the charge.^[50] On April 15, 1994, Manansala, assisted by counsel, was arraigned and pleaded not guilty.^[51] On April 21, 1994, Del Rosario appeared before the court and stated that he wanted to testify and elucidate on how the crime charged was committed by him and his cohorts. The court granted Del Rosario's request. With the assistance of counsel de parte, he forthwith testified on how he, Manansala and the appellant perpetrated the crime.^[52] The court, thereafter, rendered judgment convicting Del Rosario of robbery with homicide and sentencing him to suffer *reclusion perpetua*.^[53]

On motion of the public prosecutor, the court admitted the Amended Information filed by public prosecutor. The amendment consisted of the inclusion of Christopher John Nash and the appellant as additional accused.^[54] Consequently, the court issued warrants for their arrest. Christopher Nash filed a petition for review of the resolution of the public prosecutor finding probable cause against him for the crime charged. On January 25, 1995, the Secretary of Justice granted the petition and ordered the public prosecutor to move for the withdrawal of the Amended Information as against Christopher Nash only. The public prosecutor filed the motion^[55] which the court granted on March 29, 1994.^[56] Manansala, through counsel, prayed for the inhibition of the Presiding Judge on the ground of partiality. The court granted the motion. The case was re-raffled to Branch 65 of the court. In the meantime, the prosecution began presenting its evidence against Manansala.

On November 20, 1995, the police operatives arrested the appellant in Cabuyao, Laguna.^[57] The appellant was arraigned, with the assistance of counsel on February 13, 1996, and entered a plea of not guilty.^[58] On November 6, 1996, Manansala died while under detention due to a mauling incident.^[59] The case against him was dismissed,^[60] while trial against the appellant continued. Considering that Del Rosario was detained at the national penitentiary, the court conducted a trial thereat on May 20, 1997, where Del Rosario testified for the prosecution and was cross-examined by the appellant's counsel.^[61]

The appellant, through counsel, admitted the due execution of the sworn statement of Rolando Fajardo,^[62] Juanito Mendoza,^[63] Marcelina Acosta^[64] and Dolores Ybasco,^[65] and waived his right to cross-examine the said witnesses.^[66] The