

EN BANC

[G.R. No. 141943-45, November 13, 2002]

THE PEOPLE OF THE PHILIPPINES, APPELLEE, VS. DIOSDADO RECEPCION Y PALASO (DECEASED), FELIPE DELA CRUZ Y REYES, AUDIE DONA Y BINAN, ALFREDO BARACAS Y CONCEPCION, EDUARDO PALACPAC Y ROSALES, BERNARDO RANARA Y MORATALLA (AT LARGE), JOEMARI DELOS REYES Y CONCEPCION, DOMINADOR RECEPCION Y PALASO AND ROBERT ALFONSO Y MARTIZANO, APPELLANTS.

VITUG, J.:

Five innocent men met their sudden death at a not-so-forlorn corner of Caloocan City when a group of malefactors, without apparent provocation or reason, had cast their terror on the early morning of 28 July 1999.

Eight^[1] persons were charged with multiple murder, violation of Presidential Decree (P.D.) No. 1866,^[2] and robbery in band in three separate accusatory Informations that read:

In Criminal Case No. 57208 –

“That on or about 1:15 o’clock a.m. of July 28, 1999 in

Caloocan City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping each other, did then and there willfully, unlawfully and feloniously, with intent to kill, evident premeditation and treachery after posing as customers and armed with unlicensed handguns entered Sabungan Fastfood & Videoke and once inside, without any provocation from anyone suddenly, unexpectedly and in totally senseless and surprising act or rampage attacked, assaulted and shot five (5) customers, namely: Benjamin E. Valdez, Rodolfo O. Ortega, Augusto A. Billodo, Ruperto S. San Juan and Renato T. Cleofas, Sr., thereby hitting and mortally wounding the said five (5) persons causing their instantaneous death.”^[3]

In Criminal Case No. 57209 – “That on or about 1:00 to 3:00 A.M. or thereabout, on July 28, 1999 in Caloocan City, Philippines, and within the jurisdiction of this Honorable court, the above-named accused had in their possession, custody and control the following firearms/handguns loaded with ammunitions to wit:

- a. One (1) Cal. 38 Armscor SN-760006;
- b. One (1) Cal. 38 Armscor SN-51 900;
- c. One (1) Cal. 38 Armscor SN-51952;
- d. One (1) Cal. 38 Squires Bingham SN-1095906;

- e. One (1) Pistol 9mm Noringco SN-861406966;
- f. Fifty-two (52) pcs. Cal. 38 live ammunitions;
- g. Twenty eight (28) pcs. 9 MM live ammunitions;
- h. Eight (8) pcs. Cal. 38 empty shells,

"without the necessary license or authority as required by law and which firearms were used in the commission of multiple murder (killing of five persons, namely: Benjamin E. Valdez, Rodolfo D. Ortega, Augusto A. Billodo, Ruperto S. San Juan and Renato T. Cleofas, Sr. at Sabungan Fastfood & Videoke, which is within the jurisdiction of this Honorable Court)."[4]

In Criminal Case No. 57210 –

"That on or about 1:15 A.M. on July 28, 1999 in Caloocan City, Philippines, and within the jurisdiction of this Honorable court, the above-named accused, acting in concert, conspiring, confederating and mutually helping one another, with intent of gain, by means of force, threats, violence or intimidation, and immediately after accused totally unprovoked and unexpected shooting rampage, which resulted in the death of several customers, did then and there willfully, unlawfully and feloniously, with the use of their unlicensed firearm, forcibly and violently take, divest, and carry away from LENY GATICA, FREDEBERT DADON, DENNIS SERRANO and RODEL FESARIT, the following cash and personal belongings, namely: a lady bracelet worth P3,500.00, three (3) men wristwatches worth P7,500.00 and the establishment earnings of P5,000.00, to the loss, damage and prejudice of the above-named owner/s."[5]

The indictees, when arraigned, pled "not guilty" to all the charges. The cases were tried jointly.

The Version of the Prosecution -

Marie Flamiano was a waitress at "Sabungan Fastfood and Videoke Pub," located along Samson Road, in Caloocan City. At about one-thirty on the morning of 28 July 1999, she was attending to customers when seven men, she identified to be Diosdado Recepcion, Alfredo Baracas, Joemari delos Reyes, Bernardo Ranara, Dominador Recepcion, Robert Alfonso and Audie Dona, entered the pub while one was tailing behind at the entrance. The men occupied table 12 and ordered beer from waitress Eliza Bautista. A few minutes later, three men from the group transferred to table 10. Just as Marie was approaching table 13 to get the microphone from a customer, one of the men stood up and fired his gun at another customer. Marie identified this gunman to be Alfredo Baracas.

Eliza Bautista, the waitress who served the group, among them Diosdado Recepcion, Robert Alfonso, Audie Dona, Alfredo Baracas, Eduardo Palacpac, Joemari delos Reyes and Dominador Recepcion, saw another man pull out a gun and shot a customer, Rodolfo Ortega, while on his knees. The women later identified the gunman to be Diosdado Recepcion. Rosalia Juanica, a co-waitress who had meanwhile dashed out and hid at the nearby "St. Joseph Store," saw Rodolfo Ortega, kneeling with both hands raised in plea, but one of the men, she likewise

identified to be Diosdado Recepcion, fired his gun at pointblank range.

Jojo Paraiso was with his co-security guards having a drinking spree when a group of armed men, started shooting. Some of the men shouted, "dapa," but Jojo's companion, Benjamin Valdez, unfortunately took a bullet shot before he could get the chance to heed the warning. Jojo identified the person who fired at Valdez to be Robert Alfonso. He hid under the table and could only watch the men gone berserk. The last of the gunmen who left the pub, still firing his gun, was Joemari delos Reyes.

Jhosa Reyes, a waitress at the A & E Kitchenette just across the Sabungan, saw the gunmen and their cohorts scamper away after the shooting incident. She recognized three of the gunmen, Robert Alfonso, Joemari delos Reyes and Eduardo Palacpac, as being "regular" customers at the A & E Kitchenette. Shortly before the shooting, Alfonso, delos Reyes, Palacpac and another companion were drinking at the kitchenette but soon headed towards the alley near the pub.

Found sprawled on the floor, when the shooting finally stopped, were the lifeless bodies of five men - Benjamin Valdez, Augusto Billodo, Renato Cleofas, Rodolfo Ortega and Ruperto San Juan.

Ruben Labjata, a jeepney driver, was waiting for passengers at Dagohoy Street, Caloocan City, when he heard gunshots. He was about to leave with only a few passengers when, unexpectedly, three men arrived and ordered all the passengers to get off the vehicle. The men menacingly pointed their guns at Labjata and ordered him to drive. Moments later, five more men boarded his jeepney. Three of the men stayed with the driver at the front seat while the other five sat at the rear. The group directed Labjata to drive towards Monumento and then to EDSA. After stopping briefly at Petron Station to refuel, the group proceeded to Quezon City. At a "7-11" convenience store in Tandang Sora, some of the men alighted from the vehicle. More gunshots were fired. Boarding once again the jeepney, the men told Labjata to go north until they finally reached, hours later, Paniqui, Tarlac. At Paniqui, the men debated on the driver's fate. After hearing one suggest that he should be killed ("tumba"), Labjata panicked and begged the group to spare him -"maawa po kayo, may pamilya po ako." One of the men allowed him to go home with a warning that he should not report the incident to the police. In open court, he identified the malefactors to be Audie Dona, Alfredo Baracas, Diosdado Recepcion, Bernardo Ranara, Eduardo Palacpac, Dominador Recepcion, Joemari delos Reyes and Robert Alfonso.

Conrado Marquez, a tricycle driver, was waiting for passengers along the highway of Paniqui, Tarlac, when he saw a group of men alight from a dirty jeepney. Four of the men rode in his tricycle, while the other four took two more tricycles. Marquez brought the group to Brgy. Coral, Ramos, Tarlac.

Around lunchtime on 29 July 1999, the Bulacan Police invited Ruben Labjata for questioning. Taken by police authorities to Tarlac, he pointed to the exact place where the armed men got off from his vehicle. Conrado Marquez, likewise invited by the police for interrogation, readily informed the police of the place where he brought the men who hired his tricycle. The police promptly cordoned the area and the group, along with FO1 Felipe dela Cruz, surrendered after several calls by the police. Taken into custody were Felipe dela Cruz, Joemari delos Reyes, Audie Dona,

Alfredo Baracas, Eduardo Palacpac, Bernardo Ranara, Robert Alfonso, and Dominador Recepcion. Diosdado Recepcion, then a special agent of the Narcotics Command, was intercepted at the national highway of Cuyapo, Nueva Ecija, on board a tricycle. At the Tarlac Police Station, Labjata identified his passengers, namely, Audie Dona, Alfredo Baracas, Diosdado Recepcion, Bernardo Ranara, Eduardo Palacpac, Dominador Recepcion, Joemari delos Reyes and Robert Alfonso.

Diosdado Recepcion, Felipe dela Cruz, Audie Dona, Alfredo Baracas, Eduardo Palacpac, Bernardo Ranara, Joemari delos Reyes, Dominador Recepcion, and Roberto Alfonso were charged with multiple murder, violation of P.D. No. 1866, and robbery in band before the Regional Trial Court, National Capital Region, Branch 129, Caloocan City. The incident that occurred at the 7-11 convenience store also spawned several separate criminal informations (not involved in the instant cases under review).

During the trial, Diosdado Recepcion died in an escape attempt, while accused Bernardo Ranara escaped and remained at large.

The Version of the Defense

The defense interposed *alibi*.

According to Dominador Recepcion, he was, at the time of the reported shooting incident, fast asleep at Greenwoods Subdivision in Cainta, Rizal, where he was a construction worker. His co-workers were Eduardo Palacpac and Robert Alfonso. On the evening of 27 July 1999, the trio went to Pansi, Paniqui, Tarlac, to help Dominador Recepcion's nephew, Joemari delos Reyes, find a job. It was after one o'clock in the afternoon when Joemari brought them to the house of his cousin FO1 Felipe dela Cruz.

Joemari delos Reyes testified that, on the afternoon of 28 July 1999, he was at home when his uncle Dominador Recepcion arrived with Robert Alfonso and Eduardo Palacpac. He brought his guests to the house of Felipe dela Cruz where they partook of beer.

Felipe dela Cruz stated that on 28 July 1999, about one o'clock in the afternoon, his father fetched him from a cousin's house. When he arrived home, he was met by Joemari delos Reyes along with the latter's companions, namely, Eduardo Palacpac, Robert Alfonso, and Dominador Recepcion. In the evening of the same day, about eight o'clock, he invited his visitors to join him in attending a wake just a few meters away, and they stayed there until dawn. The following morning of 29 July 1999, policemen arrived and cordoned his house. He was arrested together with Joemari delos Reyes, Audie Dona and Alfredo Baracas. During a series of questioning at the Caloocan Police Station, dela Cruz insisted that he was attending a wake at the time the shooting incident occurred in Caloocan City.

Audie Dona said that on 28 July 1999, he and his friend Alfredo Baracas, went to Pansi, Ramos, Tarlac, to visit his cousin Joemari delos Reyes and to get some fresh fish and vegetables. When he did not find Joemari at his house, he and Baracas proceeded to the place of dela Cruz where they were invited to join the group of Felipe dela Cruz, Joemari delos Reyes, Eduardo Palacpac, and Dominador Recepcion in a drinking spree. Dona and Baracas stayed until nine o'clock in the evening when

they repaired to the house of Joemari to spend the night. On 29 July 1999, he and Baracas went back to see dela Cruz but found Joemari still sleeping. The two dozed off while waiting for Joemari to wake up until they all found themselves surrounded by the police.

When the trial was over and weighing the evidence before it, the court *a quo* found the several accused guilty in Criminal Case No. C-57208 for multiple murder but acquitted them in Criminal Case No. C-57209 for the charge of illegal possession of firearm and Criminal Case No. 57210 for robbery in band because of insufficiency of evidence. The trial court adjudged thusly:

"WHEREFORE, premises considered, this Court finds the following accused GUILTY beyond reasonable doubt of Multiple Murder in Criminal Case No. C-57208, as defined and penalized under Art. 248 of the Revised Penal Code, as amended by Section 6 of Rep. Act No. 7659:

1. Audie Dona
2. Alfredo Baracas
3. Bernardo Ranara (escaped)
4. Eduardo Palacpac
5. Dominador Recepcion
6. Joemari delos Reyes
7. Robert Alfonso

"Accordingly, the 7 above-named accused shall each serve the penalty of *DEATH FIVE (5) TIMES OVER* corresponding to the 5 victims they murdered.

"By way of civil liabilities, the 7 above-named accused shall jointly and severally pay the following amounts of money to the following complaining witnesses, without subsidiary imprisonment in case of insolvency:

1. Divina Ortega -

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a) Death Indemnity	-	50,000.00
b) Moral Damages	-	100,000.00
c) Funeral expense	-	20,000.00
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T O T A L	-	170,000.00

2. Virginia Cleofas -

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a) Death Indemnity	-	50,000.00
b) Moral Damages	-	100,000.00
c) Funeral expense	-	20,000.00
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