

FIRST DIVISION

[G.R. No. 112177, January 28, 2000]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. TITO ZUELA Y MORANDARTE, MAXIMO VELARDE Y DE LOS REYES, AND NELSON GARCIA Y TEMPORAS, ACCUSED-APPELLANTS.

D E C I S I O N

PARDO, J.:

The case is an appeal of accused Maximo Velarde y de los Reyes, Nelson Garcia y Temporas and Tito Zuela y Morandarte from the decision^[1] of the Regional Trial Court, Camarines Sur, Libmanan, Branch 24, finding them guilty beyond reasonable doubt of robbery with homicide and sentencing each of them to *reclusion perpetua*, and to pay jointly and severally the amount of one hundred thousand (P100,000.00) pesos to the heirs of Maria Abendaño and John Abendaño, and fifty thousand (P50,000.00) pesos to the heirs of Hegino Hernandez, without subsidiary imprisonment in case of insolvency, and to pay the costs.^[2]

On July 29, 1985, Assistant Provincial Fiscal Julian C. Ocampo III filed with the Regional Trial Court, Libmanan, Camarines Sur an information charging accused Maximo Velarde y de los Reyes, Nelson Garcia y Temporas and Tito Zuela y Morandarte with "robbery with triple homicide" committed as follows:

"That in the evening of April 27, 1985 in Camagong, Cabusao, Camarines Sur, Philippines, the above-named accused, conspiring and confederating together and mutually aiding each other, with intent to gain, did then and there, willfully, unlawfully, and feloniously, with violence and intimidation against [sic] persons, that is by shooting and stabbing one Hegino Hernandez, Sr., Maria S. Abendaño and John-John Abendaño, thereby inflicting upon them mortal injuries that caused their instantaneous death, take, rob and carry away the following personal properties belonging to the said Maria Abendaño, to wit:

- | | | |
|-----|---------------------------------|------------|
| (1) | Cash money | P21,000.00 |
| | | |
| (2) | one gold ring | P 750.00 |
| | | |
| (3) | one Seiko wrist watch | P 1,250.00 |
| | | |

P23,000.00

"That as a consequence of the felonious act of the accused, the heirs of the deceased suffered damages in the amount of P25,000.00 each, representing indemnity for death, loss of earning capacity and moral damages.

"CONTRARY TO LAW."^[3]

On June 1, 1985, Maximo Velarde was arrested at Magallanes, Sorsogon, while accused Nelson Garcia and Tito Zuela were arrested at Cabusao, Camarines Sur on June 4, 1985 and June 9, 1985, respectively.

On March 26, 1987, all three accused, were arraigned with the assistance of their counsel, and pleaded not guilty to the charge. Trial ensued.

The evidence established the following facts:

Maria Abendaño was engaged in business. She had a store, operated a passenger jeepney and engaged in the buy and sale of palay. Her house cum store was beside that of her sister Romualda Algarin's house, by the roadside in Barcelonita, Cabusao, Camarines Sur. Romualda also had a store.

Accused Nelson Garcia was Maria's store helper. Accused Tito Zuela alias "Anting" helped Romualda in her store during palay season. The other accused Maximo Velarde was known to Romualda because she met him at a birthday party held at Maria's house on April 19, 1985. The three accused were friends.

On April 27, 1985, Maria made three (3) deliveries of *palay* on board her jeepney, driven by Hegino Hernandez, Jr., to the ricemill of Gerardo Benitez in San Juan, Libmanan, Camarines Sur. Every delivery costs seven thousand (P7,000.00) pesos. The three deliveries were made at 9:00 in the morning, 2:00 in the afternoon and 7:30 in the evening.^[4]

Between 6:30 and 7:00 in the evening of that day, from a distance of five (5) arms length, Romualda saw the three (3) accused board the jeepney of Maria, bound for San Juan, Libmanan, Camarines Sur. Because the jeepney was filled with *palay*, they merely held on the railing of the jeepney.^[5] There were other passengers namely, Pablo Abendaño and Roberto Echiaca.^[6]

Gerardo Atienza, the buyer of *palay*, saw Maximo inside the jeepney during the second and third delivery of palay to his ricemill.^[7] For each delivery, Gerardo paid Maria the amount of seven thousand (P7,000.00) pesos.

The following morning, the bodies of Hegino Hernandez, Maria and John-John Abendaño were found in *rigor mortis* condition at New Poblacion, Cabusao, Camarines Sur.^[8]

Dr. Restituto Sampilo, municipal health officer of Cabusao, found Maria in a reclining position on the front seat of the jeepney. John was in a semi-kneeling position, facing his mother with both hands clasping her left hand. Hegino was at the steering wheel with his body, from the abdomen up, resting on the side of the vehicle and his head outside of it.^[9] A bullet that exited from Hegino's left eyebrow caused the wound near his right ear.^[10]

Maria had a horizontal stab wound at the front part of her neck just above the

xyphoid process.^[11] Her seven (7) year old son, John, had a three (3) inch slashed horizontal wound at the front base of the neck, a two (2) inch wound on the left upper arm and two (2) stab wounds on the lateral side of the neck at the junction of the right shoulder.^[12] Hegino had a small wound with slightly depressed edges, about an inch from the highest tip of the right ear, a wound with everted and lacerated edges above the middle part of the left eyebrow, and seven (7) stab wounds at the back.^[13]

Though there were no eyewitnesses, the prosecution established how the crime was committed with the testimony of Romualda Algarin, which was in turn based on the extrajudicial admission given by Maximo Velarde to Romualda when she visited the latter at the Camaligan municipal jail on June 6, 1985.

Maximo, Tito and Nelson conceived the plan to hold-up Maria while drinking in front of Romualda's store because Maximo needed money for his fare to Manila.

When the *palay*-laden jeepney of Maria left for Libmanan, Camarines Sur Maximo, Tito and Nelson boarded it. They alighted at sitio Cagumpis, Camagong, Cabusao, Camarines Sur to attend a wedding.^[14] Maximo was supposed to board the jeepney on its way back to Barcelonita, while the other two (2) accused, Tito and Nelson would wait along the road at the crossing of New Poblacion and Camagong, Camarines Sur to board the jeepney and hold-up Maria.

Everything went according to plan. Nelson and Tito hailed the jeepney at the crossing of Cabusao, Camarines Sur. Upon reaching an uninhabited place, Tito alias "Anting" told Velarde: "*Oragui na ngayang driver.*"^[15] Maximo poked a gun at the driver and shot him. He also shot Maria at the neck when the latter shouted.^[16]

Nelson and Tito alighted from the jeepney. Nelson went to the left front side of the jeepney, while Tito approached the right front side of the jeepney, in the process stepping on the sleeping John-John who was then awakened. The boy stood up and said, "You will see I will tell my father that you killed my mother."^[17] To avoid being identified by the boy, Tito told Maximo "*Oragui na ini.*"^[18] Maximo took hold of the boy's hair and slashed his neck.

Tito took Maria's money and divided it, each accused receiving about seven thousand (P7,000.00) pesos from the loot.

Tito and Nelson went back to Barcelonita, Cabusao, Camarines Sur. Maximo proceeded to Manila.

On June 1, 1985, Lt. Ernesto J. Idian, Station Commander, Cabusao Police Station, Cabusao, Camarines Sur assisted by two (2) other policemen, arrested Maximo in Magallanes, Sorsogon. Though no warrant of arrest had been issued, Maximo was immediately brought to the Camaligan police station in Camaligan, Camarines Sur where he was investigated and asked to give a written statement in the presence of Atty. Jose Ocampo from the Citizen's Legal Assistance Office (CLAO), Naga City.^[19]

On June 4, and 9, 1985, Tito and Nelson were taken into police custody without a warrant. They underwent custodial investigation without the assistance of counsel

because no lawyer could be found in Cabusao, Camarines Sur.

On the last page of each accused's confession appeared a statement, in their own handwriting, to the effect that they voluntarily gave their statements and that no one coerced or promised them anything to admit responsibility for the crime.

Maximo, Nelson and Tito signed their individual statements before Judge Lore R. Valencia Bagalacsa, Municipal Circuit Trial Court, Libmanan, Camarines Sur on three (3) different dates.^[20] She followed the same procedure and line of questioning, using the local dialect, in ascertaining the voluntariness of the three (3) accused's confessions. She ordered Lt. Idian and his companions to leave her and the accused inside the chamber.^[21] Satisfied that they were properly apprised of their rights and that they voluntarily executed their statements, she had them sign their individual extrajudicial statements.

Antonio Abendaño, the husband of Maria, was working at Saudi Arabia when his family was killed. He came to know about the tragic death of his wife and son through an overseas call from his brother Renato Abendaño. When he learned about it, he became unconscious. He arrived in the Philippines five (5) days after.^[22] He knew Nelson Garcia because he was the son of his cousin. He was also familiar with Tito Zuela, but he did not know Maximo Velarde. He spent twenty thousand (P20,000.00) pesos for the funeral of his wife and son. He gave one thousand (P1,000.00) pesos financial assistance to the family of their driver, Hegino.^[23]

On the other hand, Maximo, Tito and Nelson interposed common defenses: (1) denial and (2) that they were tortured and forced to make a confession. In addition, Tito and Nelson claimed they were not assisted by counsel when their confessions were taken, while Maximo alleged the defense of *alibi* saying that he did not leave Magallanes, Sorsogon anytime in 1985.

On June 1, 1985, five (5) persons, led by Lt. Idian, went to the house of Maximo Velarde in Magallanes, Sorsogon to fetch him because his parents wanted him at Cabusao, Camarines Sur as his brother Benito Velarde died. He was shown the picture of the cadaver of his brother. Maximo went with the group of Lt. Idian on board a red car and traveled to Naga City, arriving there between 7:00 and 8:00 in the evening.

In a dark place before reaching Naga City, the driver stopped the vehicle to urinate. Before the driver could return, Maximo felt a hard object hit his head and he passed out. When he regained consciousness, he was already handcuffed. Pointing a gun at him, Lt. Idian told him that he had two choices, either to die or sign the statement they prepared because his brother had wronged them. He was warned not to tell anyone that he was mauled. Thereafter, they proceeded to the Camaligan municipal jail.

Two days later or on June 3, 1985, Maximo was brought out of the jail and ushered into a small room where he saw three persons, namely Lt. Idian, Atty. Jose Ocampo from CLAO, Naga City and Pat. Gonsalo Refe, a police investigator from Cabusao, Camarines Sur. Atty. Ocampo read to him the contents of a prepared statement, which in substance mentioned that some people died and that he was responsible for their death. Maximo refused to sign. Atty. Ocampo stepped out of the room,

followed by Lt. Idian and he overheard that he would be made to sign the statement in Atty. Ocampo's office in Naga City. Atty. Ocampo then left and Lt. Idian returned to the room.

Upon Lt. Idian's return to the smaller room, he kicked Maximo in the stomach and poked a gun at him. Consumed by fear, Maximo promised that he would sign the prepared statement. He was then handed a piece of paper and ordered to copy its contents on the prepared statement. Found on page 5 of his extrajudicial confession was this statement, in his own handwriting:

"Opo binasa ko po ang apedabeth na ito na may 5# pahina na pawang totoo at sasareling kagustohan at walang nantakot o nangako."^[24]

On June 4, 1985, Maximo again signed the statement before Judge Lore R. Valencia Bagalacsa, Municipal Circuit Trial Court, Libmanan, Camarines Sur. From the time accused Maximo was arrested, he was never released. Maximo denied that he saw and talked to Romualda on June 6, 1985 at the Camaligan municipal jail because he had been detained at the Libmanan municipal jail since June 4, 1985.

For his part, Nelson Garcia denied any knowledge of the crime. On June 4, 1985, the group of Pat. Gonsalo Refe went to his house and invited him to the office of Lt. Idian. He was brought to the Camaligan Police Station. Upon their arrival, Lt. Idian talked to him and tried to convince him to confess to the killing of the Abendaños. Because Nelson refused, Lt. Idian brought him upstairs and mauled him. He was transferred to Naga City jail, where he was detained for two (2) hours.

Thereafter, he was brought to the Cabusao Police Station where Pat. Rodolfo O. Cariño subjected him to another investigation. Because of his continued refusal to confess, he was mauled again, this time by Pat. Cariño.

To avoid further injury to his person, on June 5, 1985, Nelson Garcia was forced to sign the prepared statement. He was neither informed of its contents nor assisted by counsel. He was handed a piece of paper, the contents of which he was ordered to copy, in his own handwriting, and in substance was similar to what Maximo was ordered to copy as his own extrajudicial statement. He was brought to the office of Judge Bagalacsa that same afternoon so that he could sign his extrajudicial statement.

From the time he was invited to the office of Lt. Idian, Nelson was never released from police custody. He was first detained at the Libmanan municipal jail, and later on transferred to the Tinangis Penal Farm in Pili, Camarines Sur. Though he suffered physically from the beatings he got from the policemen, he was never permitted to see a doctor. His relatives were not able to visit or talk to him because the policemen prohibited visitors.^[25]

Like Nelson, Tito alias "Anting," denied participation in the crime. On July 9, 1985, Pat. Refe invited him to the office of Lt. Idian in Cabusao, Camarines Sur. Upon arrival at the police station, he was investigated about his knowledge of the crime. Failing to elicit any information from him, he was brought to Libmanan jail where he spent the night.

The following day, Tito was again brought to Cabusao Police Station and presented