

SECOND DIVISION

[G.R. No. 117802, April 27, 2000]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
DENNIS LEGASPI Y CUSI, EMILIO FRANCO Y FADERAN,
ACCUSED-APPELLANTS.**

DECISION

BUENA, J.:

For the robbery-slay of Police Officer Carlos Deveza and the physical injuries inflicted on Wilfredo Dazo, the Regional Trial Court of Pasay City, Branch 114 convicted accused-appellants Dennis Legaspi and Emilio Franco, in Criminal Case No. 92-2109, for the special complex crime of Robbery with Homicide.

Nursing principally the twin defenses of alibi and denial, accused-appellants now come before us to assail the trial court's decision^[1], the decretal portion of which reads:

" Wherefore, the court finds accused Dennis Legaspi Y Cusi and Emilio Franco Y Faderan guilty beyond reasonable doubt as principals of the complex crime of robbery with homicide punishable under paragraph 1, Article 294, Revised Penal Code and imposes on both of them the mandatory penalty of reclusion perpetua along with its accessory penalties, to pay jointly and severally the following:

a) Heirs of Carlos Deveza:

1. The sum of P50,000.00 for (sic) reason of the death of the victim SP03 Carlos Deveza;
2. P21,719.40 for actual damages;
3. P300,000.00 by way of restitution of the unrecovered cash amount stolen;
4. P50,000.00 moral damages;

b) Wilfredo Dazo

1. P49,762.32 for actual damages;
2. P30,000 for moral damages.

Both to pay a fine of P20,000.00 each and to pay the proportionate share of the costs.

Let the property bond posted for the provisional liberty of accused Dennis Legaspi be cancelled, and a commitment order issue for the transfer of both accused to the Bureau of Correction, Muntinlupa, Metro Manila, Philippines.

SO ORDERED."

On 24 December 1992, appellants Legaspi and Franco were charged with robbery with homicide and serious physical injuries in an information^[2] the accusatory portion of which reads:

" That on or about the 28th day of November, 1992, in Pasay City, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, said accused, conspiring and confederating together and mutually helping one another, with intent to gain and by means of force and intimidation employed on the person of one SP03 Carlos Deveza Y Sanchez, did then and there divest and carry away from said victim his black shoulder bag containing the following items, to wit:

1. Cash amount of P300,000 more or less
2. Assorted checks
3. Assorted jewelry
4. Service firearm

Belonging to SP03 Carlos Deveza Y Sanchez with a total amount of P1.5 million, more or less, Philippine Currency to the damage and prejudice of said owner in the said total amount; that likewise on the occasion of the said robbery and for the purpose of enabling them to take, steal and carry away the articles above-mentioned, herein accused, in pursuance of their conspiracy, did then and there willfully, unlawfully and feloniously attack, assault and shoot with a gun they were then provided with at the vital parts of the body of the said SP03 Carlos Deveza Y Sanchez thereby causing upon said SPO3 Carlos Deveza Y Sanchez mortal wounds which caused his instantaneous death; and thereafter, herein accused, in pursuance of their conspiracy did then and there willfully, unlawfully and feloniously attack, assault and shoot at the cheek with a gun Wilfredo Dazo Y Morbos, thereby inflicting upon him serious physical injuries which required and will continue to require medical attendance for more than thirty (30) days.

Contrary to law.
Pasay City, Metro Manila
December 24, 1992."

Upon arraignment, Legaspi and Franco, assisted by their respective counsels, pleaded not guilty to the charge.

The trial court anchored the conviction of accused-appellants Legaspi and Franco on facts culled from the collective testimony of the witnesses presented by the prosecution, namely: Ramon Tulod, Wilfredo Dazo, Estella Tuplano Deveza, Dr. Ariel M. de Sagun and NBI Medico Legal Officer Dr. Valentin Bernaldes.

As early as five in the afternoon of 28 November 1992, Ramon Tulod, a store helper of the Devezas, was already waiting for the arrival of his Kuya Carlos (Carlos Deveza), in front of CDS Stall owned by the latter and located at the Cartimar Plaza Market, Pasay City. At 6:20 PM, SP03 Carlos Deveza, erstwhile member of the Philippine National Police, Western Police District and a new transferee at the Southern Police District Command at the time of his death, arrived at the Cartimar Plaza Market to fetch his wife, Estella Deveza, who was then closing the family chain

of stalls for the day.

Upon arrival, Carlos parked his Toyota Tamaraw vehicle along Cartimar Avenue, specifically in front of CDS Stall. Immediately thereafter, Estella approached Carlos, who was still at the driver's seat, and handed him a black leather bag which contained P300,000.00 cash, pieces of jewelry and checks^[3] while Ramon Tulod loaded the rotten vegetables, packed in eight white plastic bags and three "kaings", at the back of the Tamaraw. Benjamin de Leon, also a helper of the Devezas, stayed near a post in front of the store, facing the side of the vehicle.

As Estella left to make a phone call, Carlos alighted from the Tamaraw and stood on the left side of the vehicle (driver's side) with both arms resting on the vehicle's window.^[4]

As an eyewitness to the crime, Ramon Tulod testified that while he was then loading the rotten vegetables at the back of the Tamaraw, with his Kuya Carlos in view, he saw Legaspi, donning white short pants, approach Deveza from behind, coming from the front of the vehicle^[5] and coming from the direction of Taft Avenue.^[6] Thereafter, Tulod saw Legaspi position himself two and a half (2½) meters away from Deveza, level and poke a gun at Deveza's nape and eventually pull the trigger.^[7] According to Tulod, Legaspi shot the victim with a gun wrapped in a piece of cloth or towel.

Fatally wounded, Deveza fell on the pavement, his head positioned toward the rear portion of the vehicle and toward Leveriza Street. Shocked by what he saw, Tulod froze and stood motionless^[8] for three seconds. The gunman then picked up Deveza's black shoulder bag^[9] and casually walked away from the scene of the crime toward Leveriza Street.

After regaining lost composure, Tulod ran toward Apartment No. 3, located 100 meters away from the scene of the crime, to inform the victim's brother, Junie Deveza, of the shooting incident. While scampering toward Leveriza Street, Tulod heard two (2) more gunshots.

On the same day, Tulod gave a sworn written statement^[10] to the police regarding the incident.

At the trial, prosecution witness Wilfredo Dazo, a tricycle driver, recounted that at the time of the commission of the crime, he was waiting for passengers at the corner of Cartimar Avenue and Leveriza Street, about ten (10) meters away from Deveza's vehicle, specifically on the second post of the dormitory.

While conversing with other tricycle drivers, Dazo suddenly heard a gunshot prompting him to dart his eyes toward the direction of the gunfire where he saw Deveza stooping and about to fall^[11] on the ground. Dazo further testified that when he initially saw Legaspi and Franco, the accused-appellants were at a distance of less than a meter from the Tamaraw. After the shooting, Legaspi and Franco walked away, one after the other^[12] from the scene of the crime, toward Leveriza Street and in the direction where Dazo was, as if nothing happened.^[13]

Pitying the victim,^[14] Dazo hid behind a post for three to four seconds^[15] and waited in ambush for Legaspi and Franco. In so doing, Dazo intended to seize and stop Legaspi who was then holding a gun, but in the process mistakenly grabbed the unarmed Franco^[16] by the waist. Thereafter, Dazo and Franco wrestled for about thirty seconds^[17] causing Dazo to fall on his knees and allowing Legaspi to take an aim and shoot at Dazo twice.

At the height of the struggle between Dazo and Franco, two shots were fired by Legaspi. After hearing the first gunfire, Dazo, thinking he was shot, looked back and saw Legaspi aiming at him a .38 caliber pistol.^[18] As a result, Dazo lost hold of Franco causing the latter to extricate and escape. Legaspi then fired the second shot, which bullet hit Dazo on the right jaw. Realizing he was hit, Dazo spun and shouted, "May tama ako!". Upon seeing the injured Dazo, the other tricycle drivers rushed him to the Manila Sanitarium Hospital for surgical operation.

During Dazo's confinement, accused-appellants were brought for identification to the Manila Sanitarium Hospital where Dazo was asked by the police if the two suspects were the same persons who shot him.^[19] Responding to the query, Dazo identified and pointed at Legaspi and Franco as the assailants who shot him.

Furthermore, Dazo, after being discharged from the hospital, proceeded with his wife to the upper floor of the police headquarters where he again identified accused-appellants in a line-up of five^[20] as the perpetrators of the crime.

Similarly during trial, Dazo positively identified accused-appellants as the two persons whom he saw walking briskly from the place where Deveza was fatally shot. Dazo clarified that Franco was the person whom he wrestled with and Legaspi was the gunman who shot him. Scncä m

Likewise, the prosecution presented Dr. Valentin Bernales, NBI Medico-Legal Officer who conducted an autopsy report^[21] on the body of Carlos Deveza. At the witness stand, Dr. Bernales testified that Deveza suffered among others, a gunshot entrance wound at the nape and an exit gunshot wound at the cheek area. The post-mortem findings also revealed that Deveza's cause of death was gunshot wound.

According to Dr. Bernales, the projectile or trajectory of the bullet, which could have been fired from a .38 caliber or 9 mm. gun, was "directly forward, slightly upward and laterally to the left." Additionally, Dr. Bernales opined that Deveza was shot at close range because of the presence of tattooing or powder burns; the assailant could be more or less three (3) feet away from the victim.

As the last witness for the prosecution, Dr. Ariel de Sagun, one of the physicians who conducted surgical operation on Wilfredo Dazo, declared on the stand that Dazo was admitted at the emergency room of the Manila Sanitarium Hospital at 7:10 PM of 28 August 1992. Dr. de Sagun testified that Dazo suffered two wounds, "one on the right side below the angle of the jaw and one on the left side".

According to Dr. de Sagun, the wounds are "fatal wounds" caused by a "high velocity missile" – a bullet.^[22] Further, Dr. de Sagun declared that based on the trajectory and the nature of the wounds, Dazo could have been stooping at the time of the

shooting, and the gunman could have been taller than Dazo.^[23]

In opposition, the defense interposed alibi and denial to substantiate accused-appellants' claim of innocence. Testifying on his behalf, accused-appellant Legaspi claimed that at the time of the commission of the crime, he was at his father's house located at No. 9 Camia St., Pasay City, to attend the birthday party of his godson and nephew—Lou Anthony Legaspi. Upon his arrival however at said address around 6:10 PM, he discovered that only his father, Victor Legaspi, was present in the house, as his nephews were accompanied by his mother, Leoncia Legaspi, to the carnival at Star City, Philcote. Subsequently, Dennis prepared and ate a sandwich; then, he watched television. At 6:45 PM,^[24] Leoncia, together with the group who went to Philcote, arrived at the house after which they all had dinner. Thereafter, Dennis again watched television at the sala but eventually fell into slumber until 11:30 PM when Leoncia awakened him to inquire whether he would still be going home to Roberts Street. Before Dennis left, Victor gave his son One hundred pesos.^[25]

While on his way home, Dennis met Johnny Adoptante, a childhood friend, at the corner of Vizcarra and Protacio Streets but the two did not talk anymore. Dennis arrived home at Roberts Street around one o'clock in the morning of 29 November 1992 and slept.

To bolster his defense of alibi and denial, Dennis Legaspi presented Victor Legaspi and Leoncia Legaspi, his father and mother respectively, who corroborated Dennis' testimony. Likewise, the defense presented Johnny Adoptante who testified that around six in the evening of 28 November 1992, at the corner of Protacio and Vizcarra Streets, Pasay City, he met and talked with accused Dennis Legaspi, who at that time was on his way to No. 9 Camia Street, Pasay City. Adoptante and Legaspi engaged in a conversation which lasted for fifteen minutes after which the latter proceeded to No. 9 Camia Street. At 11:30 PM, Adoptante again saw Legaspi as the latter was on his way home to Roberts Street. Sdaad

Similarly, accused-appellant Emilio Franco raised the twin defenses of alibi and denial. According to Franco, at 3:45 PM of 28 November 1992, he went to 116 Roberts Street, Pasay City to visit his sister Elsa Franco Misleng, fetch water and play "Pusoy Dos", a local card game.^[26] At 4 PM, Emilio Franco, Elsa Franco Misleng and Jose Villarin III played "Pusoy dos" until past 9 PM, after which Emilio went to sleep and woke up only the following morning of 29 November 1992.

Furthermore, the defense presented the testimonies of the following witnesses to corroborate the version of accused-appellant Emilio Franco: Epifanio Sarmienta, a boarder of the Francos at 116 Roberts Street; Jose Villarin III, nephew of Emilio; and Elsa Franco Misleng, sister of Emilio.

Around 11:30 AM of November 29, 1992, policemen—acting on an informer's tip that persons involved in the Deveza robbery-slay ran inside the Franco Compound at Roberts Street—went to said place, gathered eleven (11) male residents of the compound and invited them to the Pasay City Police Headquarters for verification. Among those invited to the police station were Dennis and Emilio. Upon arrival thereat, the eleven males were made to stand in a police line-up and photographed after which they were released, except for accused-appellants Legaspi and Franco