

EN BANC

[G.R. No. 125128, July 19, 2000]

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ARIEL PEDROSO Y CIABO, ACCUSED-APPELLANT.**

D E C I S I O N

MELO, J.:

Under Article 63 of the Revised Penal Code, if an accused is found guilty of a felony for which the law prescribes a penalty composed of two indivisible penalties, the trial court judge has to impose one or the other, not both. This rule, elementary as it is, needs reiteration in the case at bar.

On June 17, 1994, Ariel Pedroso y Ciabo was charged before Branch 26 of the Regional Trial Court of the National Capital Region stationed in Manila with the crime of robbery with homicide, committed as follows:

That on or about June 2, 1994, in the City of Manila, Philippines, the said accused, conspiring and confederating with others whose true names, identities and present whereabouts are still unknown and helping one another, did then and there willfully, unlawfully and feloniously, with intent of gain and by means of force, violence and intimidation, to wit: while on board a passenger jeep cruising along Legarda Street, Sampaloc, this City, suddenly announced it was a hold-up and simultaneously poked firearms and bladed weapons on its passengers, then forcibly take, rob and carry away from CONSTANTINO LUCERO y FAYLOGA the following:

- three (3) pcs. men's rings
- two (2) pcs. gold necklace
- one (1) pc. bracelet
- one (1) pc. Seiko wristwatch

all in the total amount of P22,000.00, belonging to said Constantino Lucero y Fayloga, against his will, to the damage and prejudice of the said owner in the aforesaid amount of P22,000.00, Philippine currency.

That on the occasion of the said robbery, the said accused in pursuance to their conspiracy, did then and there willfully, unlawfully and feloniously with intent to kill, assault, attack and use personal violence upon the person of said Constantino Lucero y Fayloga, by then and there shooting the latter with unknown caliber of firearm hitting him on the right side of the neck and left chest and thereafter stabbing him with bladed weapons at the back of his body, thereby inflicting upon him serious physical injuries, which are necessary fatal and mortal which were the direct and immediate cause of his death thereafter and causing one ELSA DIOSO,

also a passenger of said jeepney to be hit by a stray bullet at the neck, and will require medical attendance for a period of not less than one (1) day but not more than nine (9) days and incapacitated and will incapacitate said Elsa Dioso from performing her customary labor during the same period.

CONTRARY TO LAW.

(Rollo, p. 7.)

Upon arraignment, Pedroso entered a plea of not guilty. Trial ensued thereafter, with the prosecution presenting five witnesses, namely, passengers Elsa Dioso and Josephine de Leon, Medico-Legal Officer Dr. Ludivico Lagat, SPO3 Edgardo Ko, and Pacita Lucero, sister of the deceased victim Constantino Lucero. For its part, the defense presented two witnesses, accused-appellant Ariel Pedroso, and his friend Rolito Roxas.

On April 23, 1996, the trial court, the Honorable Guillermo L. Loja, Sr. presiding, rendered the decision now under review, disposing:

WHEREFORE, PREMISES CONSIDERED, this Court finds the accused, ARIEL PEDROSO y CAIBO, GUILTY beyond reasonable doubt of the crime of Robbery with Homicide as defined and penalized under Article 294, par. 1, Revised Penal Code as amended by R.A. 7659, and hereby sentences him to suffer the penalty of Reclusion Perpetua to Death plus accessory penalty provided by law, and to indemnify the family of the victim, Constantino Lucero, the sum of Eighty Thousand Pesos (P80,000.00) as actual damages, and the sum of Three Hundred Thousand Pesos (P300,000.00) as moral damages, without subsidiary imprisonment in case of insolvency, and to pay the cost of suit.

SO ORDERED.

(Rollo, p. 21.)

The case for the prosecution may be synthesized as follows:

In the evening of June 2, 1994, Elsa Dioso and Josephine de Leon were going home to Sta. Mesa from Divisoria, where they had just visited a friend. They boarded a passenger jeepney plying the Divisoria-Cubao route, sitting beside each other on the right side of the jeepney. As the jeepney passed Isetann Department Store along Recto Avenue, three men got on board. One sat on the left side of the jeepney, immediately behind the driver, while the other two sat on the right side of the jeepney, one at Josephine de Leon's right, the other at Elsa Dioso's left.

As the jeepney was approaching the Nagtahan fly-over at around 9 o'clock, the person immediately behind the driver, later identified as accused-appellant Ariel Pedroso, whipped out a gun and announced, "Huwag kayong kikilos ng rnasama. Holdap ito! " Simultaneously, the man at Josephine de Leon's right pulled out a balisong while the man at Elsa Dioso's left brandished a gun. Pedroso took from the passenger seated beside him, later identified as Constantino Lucero, the latter's necklace and wristwatch. Encountering resistance while removing Constantino's

other jewelry, Pedroso shot the former. Constantino was not hit, however, as he was able to push Pedroso's shooting arm, spoiling the latter's aim. Deflected, the bullet grazed Dioso's neck and hit one of Pedroso's companions instead, who exclaimed, "*Pare, tinamaan mo ako.* " Further efforts to remove Constantino's remaining jewelry met with difficulty, prompting one of the hold-uppers to shout `Putang ina, pare, patayin mo na 'yan. " A gunshot rang out and Constantino fell to the floor of the jeepney. In this position, he was stabbed several times by the knife-wielding cohort of Pedroso. As the attack took place, the other passengers, Elma Dioso included, jumped off the moving jeepney. However, upon noticing that Josephine de Leon had been left behind inside the jeepney, Elsa DIOSO returned and sat at the front passenger seat of the jeepney. From that vantage point, she saw the victim being stabbed. The three hold-up men then alighted, hailed a passing jeepney, and fled.

Ramon Aduviso, the driver of the jeepney, sped to Station 8 of the Western Police District to get help. Escorted by police, Aduviso then rushed Constantino to the University of the East Ramon Magsaysay (UERM) Hospital for treatment. Constantino was, however, pronounced dead on arrival.

Informed of the incident, PO3 Edgardo Ko went to the UERM Hospital to investigate the incident. Finding Constantino dead, Ko proceeded to the scene of the crime. An examination of the jeepney revealed splotches of blood on its flooring. A deformed slug was likewise found under the passenger seat of the jeepney. Passengers Elsa Dioso and Josephine de Leon also appeared before the police and gave their account of the incident.

In the afternoon of June 13, 1994, a police informant called up the WPD and informed the officer on duty that the persons involved in the robbery-holdup could be found inside a vacant lot along Leon Guinto Street, Malate, Manila. Acting on the tip, the police rushed to the area and found two persons there, one of whom is accused-appellant Pedroso. The two were brought to the police station for investigation, and the witnesses to the holdup were called to confront the suspects.

Although placed in a police line-up of seven persons, accused-appellant Pedroso was, without hesitation, positively identified by witnesses Elsa Dioso and Josephine de Leon as one of those involved in the robbery-holdup. He was consequently arrested and a case of robbery with homicide filed against him.

In the interim, Pacita Lucero, the sister of Constantino, requested the National Bureau of Investigation (NBI) to conduct an autopsy on the body of Constantino. Dr. Ludivino Lagat, an NBI medico-legal officer, conducted the autopsy at around 9:30 in the morning of June 3, 1994. His examination revealed that Constantino had sustained two gunshot wounds and five stab wounds, all of which were fatal. The first wound was caused by a gun fired from a distance of 1-2 feet, with the point of entry at the right side of Constantino's nape and exiting at his left cheek. The second gunshot wound, which had no exit wound, was located slightly above and to the left of Constantino's groin. On the other hand, the first stab wound, located on the left of Constantino's chest, perforated the victim's *vena cava* and aorta. The autopsy report issued by Dr. Lagat has the following findings:

Stab wound; all elliptical, clean cut edges, with a sharp and a blunt extremities, oriented in different direction:

- 1) 1.6 cms., located at the anterior chest wall, left side, 2.5 cms., from the anterior median line; directed backward, downward medially, involving the soft tissues, entering the left thoracic cavity and cutting the 2nd rib, then perforating the superior *vena cava* and aorta, with a depth of 12.0 cm.
- 2) Four (4) in number, with an area of 12.0 x 4.0 cms., shortest is 1.8 cm. and longest is 2.0 cm., located at the thoraco-lumbar region; left side; 9.0 cms. nearest and 20.0 cms., farthest from the posterior median line; directed generally forward, 3 are penetrating, 1 entered through the 8th intercostal space and 2 through the 10th intercostal space; involving the soft tissues, then to the lower lobe of the left lung twice (2x) and stomach, with a depth of 13.0 cm.

GUNSHOT WOUNDS:

- 1) ENTRANCE, 1.1 x 0.9 cms., ovaloid, inverted edges, contusion collar widest at the inferior border, with tattooing measuring 5.0 x 4.0 cms., located at the nape, right side; 5.0 cm. behind and 6.0 cm. below the right external auditory meatus; directed forward, upward right to left, involving the soft tissues fracturing the maxillary and palatine bones and bones on the middle cranial fossa, left making an EXIT; 2.0 x 1.0 cms., stellate, everted edges at the left maxillary area; 5.5 cms. in front and 2.0 cms. below the left external auditory meatus.
- 2) ENTRANCE, 1.0 x 1.0 cms., round, inverted edges, clean cut almost uniform in distribution, located at the left iliac region, 85.0 cm. from the left heel and 16.5 cm. from the anterior median line, directed backward, medially, slightly upward, involving the soft tissues and fracturing the iliac bone and the deformed slug was recovered in that area, 89.0 cm. from the left heel.

CAUSE OF DEATH: Stab wounds and gunshot wounds.

(p. 75, original Record.)

Pacita Lucero, the sister of the victim, testified that their family spent P80,000.00 for the burial of her brother. She presented receipts and expense reports as proof of her claim.

Testifying in his behalf, accused-appellant Ariel Pedroso asserted that at the time of the incident, he was at home in Leon Guinto Street, Malate. Accused-appellant claimed that he was only forced to admit to the crime by the police, who mauled and tortured him while he was under detention. He claimed that when he reported his ordeal at the hands of the police to the inquest fiscal, the latter ignored his complaint. Accused-appellant, however, did not present any medical certificate to prove his claim of torture.

Likewise, accused-appellant was unable to present any other witness to corroborate or confirm his alibi. The testimony of his only witness, Rolito Roxas, was limited to the alleged good and trustworthy character of accused-appellant.

Giving full faith and credence to the eyewitness accounts of Elsa Dioso and Josephine de Leon, the trial court, in its April 20, 1996 decision, found accused-appellant guilty of robbery with homicide and imposed on him the penalty of reclusion perpetua to death.

In this appeal, accused-appellant anchors his prayer for acquittal on the alleged lack of credibility of prosecution witnesses Elsa Dioso and Josephine de Leon. Specifically, he claims that he could not have been positively identified by the prosecution witnesses since they were not afforded a clear view of the hold-uppers under the circumstances. Accused-appellant asserts that the prosecution's evidence would, thus, be insufficient to support his conviction.

Accused-appellant's contentions lack merit.

Preliminarily, it must be observed that the issues raised by accused-appellant involve the credibility of witnesses, matters which are best addressed by the trial court, it being in a better position than an appellate court to decide such questions, having heard the witnesses and observed their demeanor, conduct, and attitude under grilling examination (*People v. Pili*, 289 SCRA 118 [1998]). Likewise, a trial court's findings on the credibility of witnesses are entitled to the highest degree of respect and will not be disturbed on appeal absent any clear showing that it overlooked, misunderstood or misapplied some facts or circumstances of weight or substance which could have affected the result of the case (*People v. Pulusan*, 290 SCRA 353 [1998]).

The exception spoken of above all too clearly does not apply in the present case, the identity of accused-appellant and his participation in the robbery having been established beyond reasonable doubt by the testimony of Elsa Dioso and Josephine de Leon.

In his defense, accused-appellant claims that it was impossible for the two witnesses to have seen him, the jeepney being fully loaded at the time of the incident. This contention is belied by the testimony of Josephine de Leon, thusly:

Court: How many hold-uppers were inside the jeepney?

A: There were three (3), sir.

Court: Who shouted "hold-up" among the three?