

THIRD DIVISION

[G.R. No. 134974, December 08, 2000]

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
DANILO ARAPOK Y CUTAMORA, ACCUSED-APPELLANT.**

D E C I S I O N

GONZAGA-REYES, J.:

This is an appeal from the decision^[1] rendered on July 29, 1998 by the Regional Trial Court, Branch CIII of Quezon City in Criminal Case No. Q-976-68841, finding accused-appellant Danilo Arapok y Cutamora guilty of robbery with homicide. Accused-appellant was charged with violation of P.D. No. 1866 and Robbery with Homicide in separate informations which alleged as follows:

In Criminal Case No. Q-96-68840 for violation of P.D. No. 1866 -

"That on or about the 29th day of November 1996 in Quezon City, Philippines, the said accused without any authority of law, did then and there willfully, unlawfully and knowingly have in his/her possession and under his/her custody and control (1) .38 caliber revolver paltik, marked S&W with two (2) spent shells and four (4) live ammunitions of the same caliber without first having secured the necessary license/permit issued by the proper authorities.

CONTRARY TO LAW."^[2]

In Criminal Case No. Q-96-68841 for Robbery with Homicide -

"That on or about the 29th of November, 1996, in Quezon City, Philippines, the above-named accused, conspiring and confederating with four (4) other persons whose true names and whereabouts have not as yet been ascertained and mutually helping one another, armed with firearms with intent to gain and by means of force, violence against and intimidation of persons, to wit: by entering the residence of one CLOUDELIA MESIONA Y JAVIER located at No. 044 Gold Street, Barangay Commonwealth, this City and once inside by poking their firearms at the persons inside the said house and announcing that it was a holdup did then and there willfully, unlawfully and feloniously take, steal and carry away the following:

One (1) VHS Video Cassette Player	- - -	P7,000.00
One (1) Lenon Instamatic Camera	- - -	900.00

One (1) Small dark blue ladies bag	- - -	50.00
One (1) Ladies Wallet	- - -	120.00
One (1) Small blue ladies bag (Park Home Cosmos)	- - -	75.00
One (1) Seiko wrist watch	- - -	1,600.00
One (1) gold ring	- - -	2,500.00
One (1) gold bracelet	- - -	15,000.00

in the total amount of P27,245.00, Philippine Currency, belonging to said CLOUDELIA MESIONA Y JAVIER against her will, to the damage and prejudice of the latter in the said amount of P27,245.00, Philippine Currency.

That on the occasion of the said offense of robbery for the purpose of enabling the said accused to take, steal and carry away the aforesaid personal properties and in pursuance of their conspiracy the said accused with intent to kill and taking advantage of their superior strengths, did then and there treacherously attack, assault and use personal violence upon PO2 ROMEO D. CALCITAS, one of the policemen from the PNP Criminal Investigation Group CID, NCRI, Camp Crame, Quezon City who responded at the scene by then and there shooting the latter several times with a firearm, thereby inflicting upon said PO2 ROMEO D. CALCITAS mortal gunshot wounds which were the direct and immediately cause of his death thereafter.

CONTRARY TO LAW."^[3]

On arraignment, accused-appellant pleaded not guilty to both charges. Joint trial of the cases ensued thus.

The prosecution presented five witnesses, namely: Senior Police Inspector Darlito Dar, SPO1 Nathaniel Mallare, PO3 Nicanor Faustino, Senior Inspector Danilo Macerin and private complainant Claudelia Mesiona.

Senior Police Inspector Darlito Dar of the Criminal Investigation Division (CID) of the Philippine National Police (PNP) testified that on November 29, 1996, he was a member of the team dispatched to conduct surveillance on the activities of the Akyat Bahay gang in Fairview, Quezon City. The team received information that there were five male persons rushing out of a house and when approached opened fire. His team tried to go to the place where there was gunfire but were unable to, for fear of being hit. When the gunfire stopped, they approached the group and discovered one of the suspects killed. The four other suspects fled from the scene. One of their companions was also shot and pronounced dead on arrival at the hospital. He learned that one of the suspects was alive and was in a hospital in Banawe. They requested that the suspect be transferred to the Camp Crame hospital. On cross-examination, he testified that he did not see Danilo Arapok ransacking the house of the victim nor during the gunfight. The first time he saw the accused was in the hospital on December 2, 1996. He added further that he did not recover guns, bullets or any of the items mentioned as stolen in the information from the accused.^[4]

SPO1 Nathaniel Mallare testified that he and other police officers were dispatched to conduct surveillance along Barangay Commonwealth in Quezon City. A few minutes after they arrived they saw five persons coming out of a house located on Gold Street corner Martan Street, carrying firearms, a plastic bag and a blanket folded over something. They introduced themselves as policemen, at which point, the persons fired at them. During the shootout, the accused was hit but was able to run. One of his companions, PO2 Romeo Calistas was also hit. The suspects were running and the police officers gave chase. During the running gunfight, they were not able to apprehend the suspects as they attended to their wounded companion. In the early morning of November 30, 1996, somebody from Galas Station called to inform them that a certain person with a gunshot wound who had himself admitted at the National Orthopedic Hospital might have something to do with the robbery the day before. His companions verified the matter and found Danilo Arapok there. He was sure that it was Danilo Arapok in the National Orthopedic Hospital because the husband (Editho Mesiona) of the owner of the house (Claudelia Mesiona) personally pointed to him as one of the robbers in his presence. On cross-examination, he testified that the incident happened at around 9:45 in the evening; that there was no Meralco post in the immediate vicinity, but the night was clear. They were at a distance of about four meters from the five persons when they introduced themselves as policemen. During the gunfight, two of these persons were killed on the spot and guns were recovered from them. He went to the hospital on December 3, 1996, and recovered none of the items mentioned in the two informations from the accused. He did not actually see accused and his companions ransack the house of the victim but saw them when they were coming out of the house. The bodies of the two suspects were located 200 meters away from the house of the victim. They recovered all the items mentioned in the information beside the two fallen suspects. Their chief turned over all of the items to the chief investigator of the CPD.^[5] He does not know if they were turned over to the owner.^[6]

PO3 Nicanor Faustino testified that he came to know the accused when he saw him at the National Orthopedic Hospital; that he was dispatched to conduct surveillance in Barangay Commonwealth in Quezon City; that he spotted five men rushing out of a house along Martan Street corner Gold Street carrying a blanket with something inside. When they saw them, they said, "Sandali, sandali. We are police officers." Soon after, a firefight commenced. He doesn't know who started the firefight as he just heard gunshots. When asked if he could identify these men again, he pointed to a person seating inside the court room who identified himself earlier as Danilo Arapok. He said he was about 200 meters away from the accused when he saw him that evening. As a result of the gunfight, two of the suspects were killed and one of his companions, Romeo Calcitas was also killed, while the others were injured. He came to know that one of the injured suspects was in a hospital in Banawe when a police officer from another police station called to say that there was a person with a gunshot wound who checked in by the name of Renaldo Reyes. On cross-examination, he testified that when they arrived at the corner of Martan and Gold Streets, police officer Calcitas was already wounded because he was part of the blocking force who met the suspects. He further testified that it was on November 30, 1996, that the police station received a call regarding a man with a gunshot wound in the National Orthopedic Hospital. They transferred the accused to the Camp Crame hospital on December 3.^[7]

Senior Inspector Danilo Macerin testified that nine operatives including himself were dispatched to Barangay Commonwealth to conduct surveillance. The operatives went to different places in the barangay. At 9:45 p.m., while cruising along Fabian street, they heard gunshots approximately 30 to 40 meters away. They alighted as they were alarmed. When they got down they saw three male persons running towards their direction, and one was carrying a plastic bag. He could not identify the one carrying the "supot." They identified themselves as police officers and immediately one of them fired at him. He retaliated and also fired. There was a running gunfight, but they stopped chasing and attended to Calcitas who was wounded. During the firefight he noticed that they wounded two of the suspects. They were able to apprehend all but one of the wounded suspects right then and there. Subsequently, they received a call from a police station about a male person with a gunshot wound confined at the National Orthopedic Hospital. Upon verification, it was found out that the person with a gunshot wound was registered as Reynaldo Reyes. On cross-examination, he testified that he was not actually present when the house of Claudelia Mesiona was robbed; that he saw Arapok in the hospital in Banawe in December but did not recover any of the stolen items from him. He didn't know that Danilo Arapok was at the scene of the crime.^[8]

Private complainant **Claudelia Mesiona** testified that on November 29, 1996, she was at home watching television when three unidentified men entered her house located in Commonwealth, Manggahan, Quezon City at around 9:45 p.m. They were carrying firearms and announced a hold-up. She was then with her husband, daughter, son, niece and househelp. They were told that they will not get hurt if they would bring out the money. Three persons went upstairs to the second floor. When she went downstairs she saw two more persons standing by the door with the other poking a gun at her husband. They were asked to lie down on their stomachs, thereafter, they were asked to go inside the comfort room without looking up. While inside the comfort room, she heard gunfire as the hold-uppers went out of the house. On cross-examination, she testified that she was on the second floor when the men entered their house and that her husband was on the ground floor. When they were led downstairs, she saw her husband lying down face flat on the floor. After the incident they did not go back to the house anymore. And they have since moved to their store in Quiapo.^[9]

On the other hand, the defense presented two witnesses, namely: the accused himself, Danilo Arapok and his sister Rosanna Arapok.

Danilo Arapok testified that he is a newspaper vendor; that on the whole day of November 29, 1996, he was in his house at Mapagbugay, V. Luna, Barangay Piñahan, Diliman, Quezon City. He sells newspapers in Quezon City Hall. At around 4 a.m. of November 30, 1996, he went out of his house to get his newspaper "paninda" from Cubao. Right after he stepped out of his house, he saw several people chasing each other and there was an exchange of gunfire. He did not know these people who were inside vehicles chasing each other. He was hit by a stray bullet ten meters from his house. He was advised by his "ate" to go to the National Orthopedic Hospital in Banawe. He arrived in the hospital at past 5 a.m. and treated thereat. After two days, he was informed by the policemen that he was one of the suspects in a robbery. He couldn't name the police officers as they were wearing civilian clothes. He was then brought to Camp Crame. At the Crame

hospital, a man and a woman arrived. A policeman asked them to point to him as one of the robbers and they did. He stayed in the Crame hospital for one month. After one month, he was transferred to a detention center. On cross-examination, he testified that he was shot about 10 meters away from his house; that he was not at the corner of Gold and Martan streets; and that he saw Caludelia Mesiona for the first time in court.^[10]

Rosanna Arapok, sister of the accused testified that she was at home in the afternoon and evening of November 29, 1996, at 41 Mapagbigay Street, V. Luna, Diliman, Quezon City. Her brother was with her at home. Her brother went out of the house in the morning of November 30, 1996 to get his "paninda" at past 4 a.m.. When he left, she heard gunshots. Then she heard somebody shout: "Ate, ate tulungan mo ako." She immediately brought him to the hospital where on the way, Danilo relayed to her that he was hit by a stray bullet by several persons who were exchanging gunfire outside. The incident was no longer reported to the police authorities as they knew that the police authorities would come anyway. Policemen went to the hospital and told her brother that he was a suspect in a robbery and that they were going to bring him to Camp Crame. On cross-examination, she testified that on November 29, 1996, she arrived home from the office at 5 p.m. The next day she did not go to work so she could accompany her brother to the hospital. She was asleep between 12 midnight of November 30, 1996, up to 4 a.m. of the next day. She said that Danilo woke her up before he got his "paninda" in the morning. Her brother left the house at 4 a.m. She does not know the private complainant in the case and she does not know of any reason why the former would identify her brother as the one who entered the house.^[11]

In sum, the testimony of the prosecution witnesses established that the residence of Cloudelia Mesiona at 44 Gold Street, Barangay Commonwealth, Quezon City, was entered into by several armed men at 9:45 p.m. on November 29, 1996 and took away several personal belongings therein with force and intimidation. As the several armed men went out of the house, they encountered a group of policemen and a running gunfight took place which attracted other police teams to the scene. As a result thereof, two of the suspects lay mortally wounded, while one of the responding officers, Romeo D. Calcitas, was hit fatally. For his part, accused-appellant sought to establish that he was wounded in the arm in another exchange of gunfire near their house at Mapagbigay Street, Barangay Piñahan, Quezon City. According to him, he was hit accidentally by the persons exchanging gunfire.

On July 29, 1998, the trial court rendered its decision, acquitting accused-appellant of the charge of illegal possession of firearms for insufficiency of evidence. However, it convicted him of the crime of Robbery with Homicide after finding the testimonies of the prosecution witnesses to be credible and rejecting accused-appellant's denial and alibi. The dispositive part of the said decision reads:

"1. In Q-96-68840 for violation of P.D. 1866 (Illegal Possession of Firearms), accused Danilo Arapok y Cutamora is ACQUITTED on insufficiency of evidence, and

2. In Q-96-68841, the accused DANILO ARAPOK y CUTAMORA is hereby found, beyond reasonable doubt, GUILTY as co-principal in the crime of Robbery with Homicide in violation of the Revised Penal Code