

THIRD DIVISION

[G.R. No. 107746, July 28, 1999]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
MARCELINO MORES Y VILLANUEVA ALIAS "CHRISTOPHER",
RONNIE RACUMA AND DANILO ZAMORA, ACCUSED. DANILO
ZAMORA, ACCUSED-APPELLANT.**

D E C I S I O N

GONZAGA-REYES, J.:

This is an appeal from a conviction for robbery with homicide by Branch 39 of the Regional Trial Court in Calapan, Oriental Mindoro^[1].

The case proceeded only as against accused Marcelino Mores and Danilo Zamora, accused Ronnie Racuma having remained at large. From the lower court's conviction, only accused Danilo Zamora appealed.

The information alleged as follows:

That on or about the 9th day of September, 1991, at around 2:00 o'clock in the morning, in the Barangay of Camilimil, Municipality of Calapan, Oriental Mindoro, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping one another, with intent of gain, did then and there wilfully, unlawfully and feloniously enter the building, housing the Caltex Gasoline Station, and once inside, forcibly opened by means of an iron pipe a cabinet and took and carried away therefrom the amount of TEN THOUSAND FOUR HUNDRED FIFTY FIVE (P10,455.00) PESOS, Philippine Currency, representing the proceeds from the sale of gasoline, to the damage and prejudice of the Manager, Belen C. Arago, in said total sum; that on the occasion of said robbery and for the purpose of enabling them to take, steal and carry away the amount above-mentioned, herein accused in pursuance of their conspiracy, did then and there wilfully, unlawfully and feloniously and with evident premeditation and taking advantage of their superior number and strength and with intent to kill, treacherously attack, assault and stab several times one Alex Montemayor who was the nightguard of the place, thereby inflicting upon him multiple stabbed wounds on the different parts of his body resultant therewith caused his instantaneous death.

That in the commission of the offense of robbery with homicide, the aggravating circumstances of treachery, nighttime and superior strength were attendant.

Contrary to Article 294, paragraph 1 of the Revised Penal Code.

The case of the prosecution relies mainly on the lone eyewitness account of Virgilio Castillo, a 19-year old boy who made a living of washing buses parked in the premises of the Caltex gasoline station where the crime took place, and who spent that ill-fated night in the office of the gasoline station (the "Caltex office", for brevity) with the victim, Alex Montemayor.

Castillo testified that on September 9, 1991, at about two o'clock in the morning, he woke up and went out of the Caltex office in order to urinate. On his way out, he met the three accused, whom he knew for being often present in the premises of the gasoline station^[2], who warned him not to return inside the Caltex office.^[3] When he asked them why they were going inside the office, he was told that it was none of his business and that they just needed to say something to Alex Montemayor.^[4] At this point, Castillo became suspicious and feared that either Alex or he might die.^[5] Afraid to walk alone to the police station in order to report the matter, Castillo instead tried to awaken the driver and conductor of Golden Rose Bus No. 16, which was parked about two arms length away from the Caltex office, as well as the driver and conductor of Mindomar Bus, which was also parked nearby. Having failed to awaken these persons, Castillo went back to Golden Rose Bus No. 16 and sat on one of the bus seats, from which vantage point he witnessed accused Danilo Zamora get an iron pipe from Mindomar Bus, and accused Marcelino Mores go behind the water tank of the gasoline station and break a beer bottle. From his position inside the parked bus and through the glass walls of the Caltex office, Castillo watched the three accused, bearing their weapons, enter the Caltex office and attack Alex Montemayor, who was then sleeping on top of a table.^[6]

In his testimony, Castillo related how he witnessed Racuma stab Alex Montemayor on the throat with the broken beer bottle, while Zamora and Mores pinned Montemayor down by holding to his hands and hair. Castillo then saw Racuma, using the iron pipe, break the glass pad on top of the table where Montemayor was lying down, causing Montemayor's body to fall to the floor. Using the same iron pipe, Racuma then proceeded to forcibly open a cabinet, built into one of the walls of the Caltex office, and retrieve from within a plastic bedpan containing the day's earnings from the sale of gasoline. Castillo remembered that earlier in the day, he helped Alex Montemayor count the money that was then placed in the plastic bedpan, which amounted to more than P10,000.00.^[7] Thereafter, Castillo watched the three accused leave the Caltex office, bringing with them the plastic bedpan, and walk towards the former site of the Petron gasoline station.^[8]

Castillo further testified on how he tried to awaken the drivers and conductors sleeping in the parked buses. His attempts having been unsuccessful, he started the engine of the Mindomar Bus, thus causing those sleeping inside the bus to be awakened. Castillo informed the driver of Mindomar Bus, known to him as *Ka Carding*, that Alex Montemayor was dead. *Ka Carding* then instructed Castillo to report the matter to Mrs. Cacha, the owner of the gasoline station.^[9]

The testimonies of Wilfredo Alegre and Cesar Gutierrez corroborated the account of Virgilio Castillo. Alegre testified that at around two o'clock of September 9, 1991, he was driving a tricycle and was about to buy gasoline at the Caltex station in Camilmil, Calapan, Oriental Mindoro when he noticed three men leave the premises of the gasoline station. He noticed that the men's clothes were stained with blood

and one of them was carrying a plastic bedpan. With the aid of the headlight of his tricycle, Alegre claimed that he was able to recognize the three men, and in court, positively identified accused Marcelino Mores and Danilo Zamora as two of them.^[10]

Cesar Gutierrez testified that at around two o'clock in the morning of the same day, September 9, 1991, he was walking along the highway in San Vicente, Calapan on his way to his house in Lumangbayan, a nearby barrio. As he passed by the old site of the Petron gasoline station, he saw three men dividing money, after which he observed one of them throw a round object on the other side of the road. He also noticed that two of the men were wearing blood-stained shirts. Gutierrez identified Mores and Zamora as two of the three men he saw. On cross-examination, Gutierrez declared that the lights from the nearby house and building, as well as from a passing tricycle, enabled him to recognize the faces of the three men.^[11]

Hours later, in the morning of September 9, 1991, the plastic bedpan^[12] was recovered by Police Officer Salvador Frayre of the Calapan Police Station in front of the former site of the Petron gasoline station.^[13] The autopsy on the body of Alex Montemayor, conducted by Dr. Arturo Alberto, Municipal Health Officer of Calapan, Oriental Mindoro, revealed the cause of death to be hemorrhage secondary to multiple stab wounds.^[14]

Accused Marcelino Mores admitted being with Ronnie Racuma and a person he was unable to identify, at the time of the robbery and killing, but maintains that he was merely forced to go with them under threat of being killed.^[15] He denied participating in the division of the loot. Accused Danilo Zamora denied participation in the commission of the crime and set up the defense of alibi. He claimed that from September 8, 1991 to September 9, 1991 he was in Morente, Bongabon, Oriental Mindoro to attend to his wife who was then delivering their child.^[16]

In handing out the judgment of conviction, the RTC declared that the denials of the accused Mores and Zamora could not prevail over the positive identification of prosecution witnesses who testified on the direct participation of both accused in the commission of the crime, and whose motives in narrating falsehood have not been shown.^[17] The dispositive portion of the assailed decision reads as follows:

ACCORDINGLY, the Court finds accused Marcelino Mores alias "Christopher" and Danilo Zamora both guilty beyond reasonable doubt, as principals, of the crime of Robbery with Homicide penalized in paragraph 1 of Article 294 of the Revised Penal Code by *reclusion perpetua* to death. Considering that there is one generic aggravating circumstance, that is, advantage was taken of superior strength, and no mitigating circumstance present, both accused should suffer the maximum period of the penalty provided by law. Considering, however, the abolition of the death penalty under the Constitution of 1987, both accused are hereby sentenced to suffer *reclusion perpetua* and to pay the costs. Both accused are likewise ordered to indemnify jointly and severally Mrs. Belen C. Arago, owner of the Caltex Gasoline Station, the amount of P10,455.00, representing the amount taken away by the accused from the said gasoline station, and also to indemnify jointly and severally the legal heirs of Alex Montemayor the amount of P50,000.00