

## SPECIAL TWENTIETH DIVISION

[ CA-G.R. CR NO. 00962, July 17, 2014 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
DANILO B. AQUINO, ACCUSED-APPELLANT.**

### D E C I S I O N

**QUIJANO-PADILLA, J.:**

#### **The Case**

This is an Appeal<sup>[1]</sup> from the Judgment<sup>[2]</sup> dated June 26, 2008 of the Regional Trial Court (RTC), Branch 18, Cebu City in Criminal Case No. CBU-62576 finding accused-appellant Danilo B. Aquino guilty of homicide and sentencing him to an indeterminate penalty of imprisonment from ten years and eight months of *prision mayor* as minimum to seventeen (17) years and four (4) months of *reclusion temporal* as maximum, and ordering him to pay the heirs of the victim the amount of Fifty Thousand Pesos (P50,000.00) as civil indemnity.

#### **The Facts**

In an Information<sup>[3]</sup> dated March 14, 2002, accused-appellant Danilo B. Aquino was charged with the crime of Robbery with Homicide allegedly committed as follows:

“That on or about the 2<sup>nd</sup> day of January 2002, at about 1:00 o'clock in the afternoon, in the City of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the said accused, being then the driver of Richieda taxi with Plate No. GWA 826, armed with an unlicensed firearm of undetermined caliber, did then and there willfully, unlawfully and feloniously, with intent of [sic] gain and by means of violence against or intimidation of persons, take, steal and carry away from the person of one Emerita F. Magno, who was then his passenger, cash in the amount of P30,000.00, to the damage and prejudice of the latter in the aforestated amount; that by reason and on the occasion of the said robbery, the herein accused did then and there willfully, unlawfully and feloniously, with intent to kill, treacherously attack, assault and use personal violence upon said Emerita F. Magno, by then and there shooting her several times with the use of the unlicensed firearm, hitting her on the different parts of her body, thereby inflicting upon her multiple mortal gunshot wounds as a consequence of which said Emerita F. Magno died few days thereafter.

CONTRARY TO LAW.”

During accused-appellant's arraignment<sup>[4]</sup> on April 19, 2005, he pleaded not guilty of the crime charged. Thereafter, trial on the merits followed.

## The Version of the Prosecution<sup>[5]</sup>

On January 2, 2002, at about 10:00 o'clock in the morning, Evelyn Magno and her mother, the victim Emerita Magno, went to SM Department Store, Cebu City, to buy groceries for the birthday celebration of Mr. Magno. After buying groceries, at around 12:00 o'clock noon, Evelyn accompanied her mother to the taxi stand near Sheraton Hotel. Only Emerita boarded the taxi while Evelyn stayed behind to buy a gift for her father. Evelyn was certain that her mother was alone with the driver at the time the taxicab left.

After buying the gift for her father, Evelyn Magno went home to assist in preparing food for the party. Upon arriving home, Evelyn's brother asked her where their mother was. Evelyn was surprised to find out that their mother had not arrived home yet. She told her brother that their mother went home right away after buying the groceries.

Meanwhile, at about 1:30 o'clock in the afternoon of even date, SPO1 Celso Gabunada, who was assigned at Police Station 11 in Mambaling Police Station, Cebu City, was having lunch when a motorcycle driver informed him that a woman covered with blood was dumped on a cliff near the Bagong Buhay Rehabilitation Center. Upon learning such information, SPO1 Gabunada immediately responded and proceeded to the place. Along the way, he met a Richielda taxi with body No. 72.

When SPO1 Gabunada reached the place as stated by the motorcycle driver, he saw a woman covered with blood holding on to a small tree. Upon inquiry, the victim told him that she was shot several times and was robbed by the driver of a Richielda taxi with body No. 72. The victim said that the taxi driver had curly hair and was sporting a beard.

The victim was brought to the Don Vicente Sotto Memorial Medical Center where she was taken to the emergency room. SPO1 Gabunada then called up the office of the Theft and Robbery Section in Camp Sotero Cabahug, Gorordo Avenue, Cebu City, and reported the incident.

A security guard of the Don Vicente Sotto Memorial Medical Center then called up Evelyn Magno to inform her of what had happened to her mother, Emerita Magno. Worried about her mother, Evelyn Magno hurriedly went to the said hospital. Upon reaching the hospital, Evelyn saw her mother covered with blood. However, she was able to talk to her mother, who told her that she was robbed by a taxi driver. Emerita further told her daughter that had she not pretended to be dead, the taxi driver might have killed her. Evelyn noticed the presence of policemen at the hospital but she did not pay attention to them.

Shortly after reporting the robbery incident, SPO2 Edgardo Galado and SPO1 Elmo Rosales arrived at the hospital. SPO1 Gabunada informed them that the victim identified the driver of a Richielda taxi with body No. 72 as her assailant. After receiving such information, SPO2 Galado and SPO1 Rosales left the hospital and conducted a follow-up operation. They were able to trace the identity of the taxi driver as accused-appellant Danilo Aquino through Richard Cabucos, the owner of the Richielda taxi. Mr. Cabucos also gave the police officers a copy of accused-

appellant's bio-data and the trip ticket for Richielda taxi with body No. 72, which accused-appellant signed on that day.

Forthwith, SPO2 Galado and SPO1 Rosales proceeded to Candarong, Pulangbato, Cebu City, the address indicated in accused-appellant's bio-data. When they reached the place, the wife of accused-appellant informed them that the latter left the house early in the morning and had not returned since then. They went back to the taxi company's office and requested the owner to contact accused-appellant. Accused-appellant replied and promised to be at the garage by 6:00 o'clock in the evening since he was still in Mandaue, reclamation area. However, accused-appellant never showed up at the garage.

Later that evening, SPO2 Galado and SPO1 Rosales gathered information from the taxicab owner that accused-appellant made a radio call that he was on his way to Waterfront Hotel to pick-up a passenger in Lahug. The police officers immediately proceeded to the place but before reaching the hotel, they found the Richielda taxi with body No. 72 abandoned in front of Camp Arcadio Maxilom, Salinas Drive, Lahug, Cebu City. After finding the taxi, they brought it to Camp Sotero Cabahug. They found bloodstains at the back of the driver's seat and saw three holes on the left side which they suspected to be bullet holes. The police officers also found two seat covers with bloodstains in the baggage compartment of the said taxicab. Thereafter, the police officers made a letter-request and submitted the taxi unit and the seat covers to the PNP Crime Laboratory for physical examination.

The following day, the police officers learned that the victim was transferred to Perpetual Succor Hospital. They went to the hospital to show to the victim the picture of the taxi driver. The victim, who was still conscious at that time, positively identified the person in the picture as the one who robbed and shot her. Consequently, the police officers made a follow-up operation in different places where accused-appellant might probably be located but to no avail.

Four (4) days later or on January 6, 2002, the victim died at the Perpetual Succor Hospital due to complication of pulmonary-cardio arrest caused by the gunshot wounds.

Several days later, a criminal complaint was filed against accused-appellant Danilo Aquino. About two (2) years after the commission of the crime, accused-appellant was finally arrested somewhere in Bogu, Cebu, by police operatives of Mandaue City.

The evidence for the prosecution were the testimonies of the following: SPO1 Celso Gabunada, SPO1 Elmo Yanzon Rosales, SPO2 Edgardo Galado, Jude Daniel Mendoza and Richard Cabucos. The victim's daughter Maria Evelyn Magno was also presented as rebuttal witness.

Documentary evidence<sup>[6]</sup> included the following:

1. Exhibit A – Front page of Super Balita issue of January 4, 2002 showing the photographs of Danilo Aquino and the Richielda taxicab;
2. Exhibit B – the picture of the accused-appellant;
3. Exhibit C – Letter-request from the Chief of the Theft and Robbery

Section (TRS), Cebu City Police Office;

4. Exhibit D – Medico-Legal Report No. S-038-2002;
5. Exhibit E – Seat cover of the Richielda taxi;
6. Exhibit F – another seat cover of the Richielda taxi;
7. Exhibit G – Bio-data of the accused-appellant on file with the management of Richielda taxi; and
8. Exhibit H - Richielda taxi remittance sheet.

#### The Version of the Accused-Appellant<sup>[7]</sup>

In his defense, accused-appellant Danilo Aquino denied the accusation against him. He claimed that on January 2, 2002, he was flagged down by two (2) passengers, a male and a female person at the vicinity of SM City Cebu. While inside his taxicab, the two (2) passengers were arguing about money. He overheard the male person pressing the female passenger for payment to their "boss."

While passing the North Reclamation Area heading for Mandaue City, the male passenger kept grabbing the bag of the female passenger, who refused to let go of the same. All of a sudden, accused-appellant heard gunshots being fired inside the taxicab. Immediately, he applied the brakes and saw through the taxicab's rear view mirror the female passenger already slumped to her side. Subsequently, the male passenger poked his firearm at the accused-appellant and ordered him to turn off the radio communication of the taxicab and to lock the doors. Out of fear for his life, accused-appellant obliged and proceeded to Kalunasan, Cebu City per instruction from the male passenger. Upon arriving at a hilly portion of Kalunasan, accused-appellant was instructed to park the taxicab alongside a cliff, whereupon the male passenger kicked the woman out and the latter fell down the cliff.

The male passenger then instructed the accused-appellant to proceed to the gasoline station at the corner of Banawa and Guadalupe, where the former disembarked. Such male passenger also warned the accused-appellant not to report what he had just witnessed to the police authorities, lest something bad will happen to him. He was also instructed to act as if he had not seen or heard anything about the incident.

Once the accused-appellant was alone, he drove aimlessly, until he reached the vicinity of the Redemptorist Church where he drank water and calmed his nerves. He continued driving and upon reaching Mandaue City, another driver from the same taxicab company informed him that all units were called back to the company's premises because of an emergency. The other taxicab driver also asked accused-appellant whether his radio was not functioning as he was the only one who did not respond to the call. Thus, accused-appellant called up their base and was informed by the owner that a woman was looking for him. He drove back to the company's office; however, he dropped by his mother's house, where he was informed that his grandmother in Butuan died and that they were to go there the following day. Such news made him even more confused as to what to do.

While proceeding to the company's office, he heard from the radio that a woman was robbed by a taxi driver and that he was the principal suspect of the crime. Shocked, accused-appellant stopped near the vicinity of Waterfront Hotel in Lahug and thought about the woman who was allegedly looking for him at the company's garage. It occurred to him that this woman might be a companion of his earlier passengers, whom he believed to be members of a syndicate. He was filled with fear for his life as he was the only witness to the killing incident. Thus, accused-appellant decided to abandon his taxicab and immediately went home. He then travelled to Butuan the following day for his grandmother's burial. It was in Butuan that he stayed out of fear, as he was already a wanted person.

While attending the burial of a friend's relative in Kawit, Medellin, Cebu, accused-appellant was arrested by the police and brought to the Bagong Buhay Rehabilitation Center (BBRC) in Cebu City.

After a few weeks inside the jail facility, he met an inmate who appeared to be strikingly similar to the male passenger who shot the victim. He confronted the inmate and learned that indeed he was his male passenger who shot Emerita Magno on that fateful day of January 2, 2002.

After several days, the male passenger whose real name was Reynaldo Palma, spoke with the accused-appellant regarding his disturbed conscience and then offered to help the latter in whatever way he could to clear accused-appellant's name.

Due to this circumstance, the defense filed an Urgent Motion for Reinvestigation with the trial court.<sup>[8]</sup> In an Order<sup>[9]</sup> dated November 30, 2004, the case was remanded to the Office of the City Prosecutor for reinvestigation and the latter was also required to submit a report within thirty (30) days from notice. In the Reinvestigation Report,<sup>[10]</sup> the assigned prosecutor posited that the matter is part of the accused-appellant's defense which is subject to the court's appraisal and determination. The role of the Office of the City Prosecutor was only to determine the existence of probable cause, which was present in this particular case.

During the course of the proceedings before the lower court, Reynaldo Palma was presented as witness by the defense. In open court, he confessed committing the crime imputed against the accused-appellant because he was bothered by his conscience.

The evidence for the defense were the testimonies of accused-appellant Danilo Aquino and that of the self-confessed perpetrator Reynaldo Palma. Their documentary evidence<sup>[11]</sup> was only Exhibit 1 – Joint Affidavit of the police officers.

### **The Ruling of the Regional Trial Court**

In a Judgment<sup>[12]</sup> dated June 26, 2008, the Regional Trial Court, Seventh (7th) Judicial Region, Branch 18, Cebu City found no basis for the crime of robbery against the accused-appellant, as no witness corroborated the victim's claim that she had cash in her possession and it was taken by herein accused-appellant. However, the lower court found the said accused-appellant guilty beyond reasonable doubt of the crime of homicide. The decretal portion of the judgment reads: