

## SECOND DIVISION

**[ G.R. No. 199877, August 13, 2012 ]**

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
ARTURO LARA Y ORBISTA, ACCUSED-APPELLANT.**

### DECISION

**REYES, J.:**

This is an automatic appeal from the Decision<sup>[1]</sup> dated July 28, 2011 of the Court of Appeals (CA) in CA-G.R. CR HC No. 03685. The CA affirmed the Decision<sup>[2]</sup> dated October 1, 2008 of the Regional Trial Court (RTC), Pasig City, Branch 268, finding Arturo Lara (Lara) guilty beyond reasonable doubt of robbery with homicide.

On June 14, 2001, an Information<sup>[3]</sup> charging Lara with robbery with homicide was filed with the RTC:

On or about May 31, 2001, in Pasig City, and within the jurisdiction of this Honorable Court, the accused, armed with a gun, conspiring and confederating together with one unidentified person who is still at-large, and both of them mutually helping and aiding one another, with intent to gain, and by means of force, violence and intimidation, did then and there wilfully, unlawfully and feloniously take, steal and divest from Joselito M. Bautista cash money amounting to P230,000.00 more or less and belonging to San Sebastian Allied Services, Inc. represented by Enrique Sumulong; that on the occasion of said robbery, the said accused, with intent to kill, did then and there wilfully, unlawfully and feloniously attack, assault, and shoot said Joselito M. Bautista with the said gun, thereby inflicting upon the latter mortal wounds which directly caused his death.

Contrary to law.<sup>[4]</sup>

Following Lara's plea of not guilty, trial ensued. The prosecution presented three (3) witnesses: Enrique Sumulong (Sumulong), SPO1 Bernard Cruz (SPO1 Cruz) and PO3 Efren Calix (PO3 Calix).

Sumulong testified that: (a) he was an accounting staff of San Sebastian Allied Services, Inc. (San Sebastian); (b) on May 31, 2001 and at around 9:00 in the morning, he withdrew the amount of P230,000.00 from the Metrobank-Mabini Branch, Pasig City to defray the salaries of the employees of San Sebastian; (c) in going to the bank, he rode a pick-up and was accompanied by Virgilio Manacob (Manacob), Jeff Atie (Atie) and Joselito Bautista (Bautista); (d) he placed the amount withdrawn in a black bag and immediately left the bank; (e) at around

10:30 in the morning, while they were at the intersection of Mercedes and Market Avenues, Pasig City, Lara suddenly appeared at the front passenger side of the pick-up and pointed a gun at him stating, "*Akin na ang pera, iyong bag, nasaan?*"; (f) Bautista, who was seated at the back, shouted, "*Wag mong ibigay*"; (g) heeding Bautista's advice, he threw the bag in Bautista's direction; (h) after getting hold of the bag, Bautista alighted from the pick-up and ran; (i) seeing Bautista, Lara ran after him while firing his gun; (j) when he had the chance to get out of the pick-up, he ran towards Mercedes Plaza and called up the office of San Sebastian to relay the incident; (k) when he went back to where the pick-up was parked, he went to the rear portion of the vehicle and saw blood on the ground; (l) he was informed by one bystander that Bautista was shot and the bag was taken away from him; (m) when *barangay* officials and the police arrived, he and his two (2) other companions were brought to the police station for investigation; (n) on June 7, 2001, while on his way to *Barangay* Maybunga, Pasig City, he saw Lara walking along Dr. Pilapil Street, *Barangay* San Miguel, Pasig City; (o) he alerted the police and Lara was thereafter arrested; and (p) at the police station, he, Atie and Manacob identified Lara as the one who shot and robbed them of San Sebastian's money.<sup>[5]</sup>

SPO1 Cruz testified that: (a) he was assigned at the Follow-Up Unit of the Pasig City Police Station; (b) at around 7:55 in the evening of June 7, 2001, Sumulong went to the police station and informed him that he saw Lara walking along Dr. Pilapil Street; (c) four (4) police officers and Sumulong went to Dr. Pilapil Street where they saw Lara, who Sumulong identified; (d) they then approached Lara and invited him for questioning; (e) at the police station, Lara was placed in a line-up where he was positively identified by Sumulong, Manacob and Atie; and (f) after being identified, Lara was informed of his rights and subsequently detained.<sup>[6]</sup>

PO3 Calix testified that: (a) he was a member of the Criminal Investigation Unit of the Pasig City Police Station; (b) on May 31, 2001, he was informed of a robbery that took place at the corner of Mercedes and Market Avenues, Pasig City; (c) he, together with three (3) other police officers, proceeded to the crime scene; (d) upon arriving thereat, one of the police officers who were able to respond ahead of them, handed to him eleven (11) pieces of empty shells and six (6) deformed slugs of a 9mm pistol; (e) as part of his investigation, he interviewed Sumulong, Atie, Manacob at the police station; and (f) before Bautista died, he was able to interview Bautista at the hospital where the latter was brought after the incident.<sup>[7]</sup>

In his defense, Lara testified that: (a) he was a plumber who resided at Dr. Pilapil Street, San Miguel, Pasig City; (b) on May 31, 2001, he was at his house, digging a sewer trench while his brother, Wilfredo, was constructing a comfort room; (c) they were working from 8:00 in the morning until 3:00 in the afternoon; (d) on June 7, 2001 and at around 7:00 in the evening, while he was at the house of one of his cousins, police officers arrived and asked him if he was Arturo Lara; (e) after confirming that he was Arturo Lara, the police officers asked him to go with them to the Barangay Hall; (f) he voluntarily went with them and while inside the patrol car, one of the policemen said, "*You are lucky, we were able to caught you in your house, if in another place we will kill you*" (sic); (g) he was brought to the police station and not the barangay hall as he was earlier told where he was investigated for robbery with homicide; (h) when he told the police that he was at home when the subject incident took place, the police challenged him to produce witnesses; (i) when his witnesses arrived at the station, one of the police officers told them to

come back the following day; (j) while he was at the police line-up holding a name plate, a police officer told Sumulong and Atie, "*Ituru nyo na yan at uuwi na tayo*"; and (k) when his witnesses arrived the following day, they were told that he will be subjected to an inquest.<sup>[8]</sup>

To corroborate his testimony, Lara presented one of his neighbors, Simplicia Delos Reyes. She testified that on May 31, 2001, while she was manning her store, she saw Lara working on a sewer trench from 9:00 in the morning to 5:00 in the afternoon.<sup>[9]</sup> Lara also presented his sister, Edjosa

Manalo, who testified that he was working on a sewer line the whole day of May 31, 2001.<sup>[10]</sup>

On October 1, 2008, the RTC convicted Lara of robbery with homicide in a Decision,<sup>[11]</sup> the dispositive portion of which states:

WHEREFORE, premises considered, this Court finds the accused ARTURO LARA Y Orbista GUILTY beyond reasonable doubt of the crime of Robbery with Homicide, defined and penalized under Article 294 (1) as amended by Republic Act 7659, and is hereby sentenced to suffer the penalty of imprisonment of reclusion perpetua, with all the accessory penalties prescribed by law.

Accused is further ordered to indemnify the heirs of the deceased the sum of Php50,000.00 as civil indemnity and Php230,000.00 representing the money carted by the said accused.

SO ORDERED.<sup>[12]</sup>

The RTC rejected Lara's defense of alibi as follows:

The prosecution's witness Enrique Sumulong positively identified accused Arturo Lara as the person who carted away the payroll money of San Sebastian Allied Services, Inc., on May 31, 2001 at around 10:30 o'clock in the morning along the corner of Mercedez and Market Ave., Pasig City and the one who shot Joselito Bautista which caused his instantaneous death on the same day. As repeatedly held by the Supreme Court, "***For alibi to prosper, an accused must show he was at some other place for such a period of time that it was impossible for him to have been at the crime scene at the time of the commission of the crime***" (People versus Bano, 419 SCRA 697). Considering the proximity of the distance between the place of the incident and the residence of the accused where he allegedly stayed the whole day of May 31, 2001, it is not physically impossible for him to be at the crime scene within the same barangay. The positive identification of the accused which were categorical and consistent and without any showing of ill motive on the part of the eyewitnesses, should prevail over the alibi and denial of the

accused whose testimony was not substantiated by clear and convincing evidence (People versus Aves 420 SCRA 259).<sup>[13]</sup> (Emphasis supplied)

On appeal, Lara pointed out several errors that supposedly attended his conviction. First, that he was arrested without a warrant under circumstances that do not justify a warrantless arrest rendered void all proceedings including those that led to his conviction. Second, he was not assisted by counsel when the police placed him in a line-up to be identified by the witnesses for the prosecution in violation of Section 12, Article III of the Constitution. The police line-up is part of custodial investigation and his right to counsel had already attached. Third, the prosecution failed to prove his guilt beyond reasonable doubt. Specifically, the prosecution failed to present a witness who actually saw him commit the alleged acts. Sumulong merely presumed that he was the one who shot Bautista and who took the bag of money from him. The physical description of Lara that Sumulong gave to the police was different from the one he gave during the trial, indicating that he did not have a fair glimpse of the perpetrator. Moreover, this gives rise to the possibility that it was his unidentified companion who shot Bautista and took possession of the money. Hence, it cannot be reasonably claimed that his conviction was attended with moral certainty. Fourth, the trial court erred in discounting the testimony of his witnesses. Without any showing that they were impelled by improper motives in testifying in his favor, their testimonies should have been given the credence they deserve. While his two (2) witnesses were his sister and neighbor, this does not by itself suggest the existence of bias or impair their credibility.

The CA affirmed Lara's conviction. That Lara was supposedly arrested without a warrant may not serve as a ground to invalidate the proceedings leading to his conviction considering its belated invocation. Any objections to the legality of the warrantless arrest should have been raised in a motion to quash duly filed before the accused enters his plea; otherwise, it is deemed waived. Further, that the accused was illegally arrested is not a ground to set aside conviction duly arrived at and based on evidence that sufficiently establishes culpability:

*Appellant's avowal could hardly wash.*

It is a shopworn doctrine that any objection involving a warrant of arrest or the acquisition of jurisdiction over the person of an accused must be made before he enters his plea, otherwise the objection is deemed waived. In voluntarily submitting himself to the court by entering a plea, instead of filing a motion to quash the information for lack of jurisdiction over his person, accused-appellant is deemed to have waived his right to assail the legality of his arrest. Applying the foregoing jurisprudential touchstone, appellant is estopped from questioning the validity of his arrest since he never raised this issue before arraignment or moved to quash the *Information*.

What is more, the illegal arrest of an accused is not sufficient cause for setting aside a valid judgment rendered upon a sufficient complaint after trial free from error. The warrantless arrest, even if illegal, cannot render void all other proceedings including those leading to the conviction of the appellants and his co-accused, nor can the state be deprived of its right

to convict the guilty when all the facts on record point to their culpability.

[14] (Citations omitted)

As to whether the identification of Lara during the police line-up is inadmissible as his right to counsel was violated, the CA ruled that there was no legal compulsion to afford him a counsel during a police line-up since the latter is not part of custodial investigation.

Appellant's assertion that he was under custodial investigation at the time he was identified in a police line-up and therefore had the right to counsel does not hold water. Ingrained in our jurisdiction is the rule that an accused is not entitled to the assistance of counsel in a police line-up considering that such is usually not a part of custodial investigation. An exception to this rule is when the accused had been the focus of police attention at the start of the investigation. In the case at bench, appellant was identified in a police line-up by prosecution witnesses from a group of persons gathered for the purpose. However, there was no proof that appellant was interrogated at all or that a statement or confession was extracted from him. *A priori*, We refuse to hearken to appellant's hollow cry that he was deprived of his constitutional right to counsel given the hard fact that during the police line-up, the accusatory process had not yet commenced.

*Assuming ex hypothesi* that appellant was subjected to interrogation sans counsel during the police line-up, it does not in any way affect his culpability. Any allegation of violation of rights during custodial investigation is relevant and material only to cases in which an extrajudicial admission or confession extracted from the accused becomes the basis of their conviction. Here, appellant was convicted based on the testimony of a prosecution witness and not on his alleged uncounseled confession or admission.[15] (Citations omitted)

The CA addressed Lara's claim that the prosecution's failure to present a witness who actually saw him commit the crime charged as follows:

**Third.** Appellant takes umbrage at the alleged failure of the prosecution to present an eyewitness to prove that he shot the victim and took the money.

*Such posture is unpersuasive.*

Contrary to appellant's assertion, prosecution witness Sumulong actually saw him shoot Bautista, the victim. Sumulong vividly recounted, *viz*:

"Q	When you said that "tinutukan ka", aside from this act was there any other words spoken by this person?
A	There was, sir.