

## THIRD DIVISION

[ G.R. No. 179943, June 26, 2009 ]

**PEOPLE OF THE PHILIPPINES, APPELLEE, VS. MARLON ALBERT DE LEON Y HOMO, APPELLANT.**

### DECISION

**PERALTA, J.:**

This is an appeal from the Decision<sup>[1]</sup> of the Court of Appeals (CA), affirming with modification the Decision<sup>[2]</sup> of the Regional Trial Court (RTC), Branch 76, San Mateo, Rizal, finding appellant Marlon Lambert De Leon y Homo guilty beyond reasonable doubt of the crime of robbery with homicide.

The factual and procedural antecedents are as follows:

According to the prosecution, in the early morning, around 2 o'clock of January 7, 2000, Eduardo Zulueta and Fortunato Lacambra III, both gasoline boys; Julieta Amistoso, cashier; and Edralin Macahis, security guard; all employees of Energex Gasoline Station, located at *Barangay* Guinayan, San Mateo, Rizal, were on duty when a mint green-colored Tamaraw FX arrived for service at the said gasoline station.<sup>[3]</sup>

Eduardo Zulueta was the one who attended to the said vehicle. He went to the driver's side in order to take the key of the vehicle from the driver so that he could open the gas tank. He saw through the lowered window shield that there were about six to seven persons aboard the vehicle. He proceeded to fill up P50.00 worth of diesel in the gas tank. After doing this, he returned the key to the driver. While returning the key, the driver told him that the engine of the vehicle would not start.<sup>[4]</sup> Eduardo Zulueta offered to give the vehicle a push. While Eduardo Zulueta and fellow gasoline boy Fortunato Lacambra III were positioned at the back of the vehicle, ready to push the same, the six male passengers of the same vehicle, except the driver, alighted and announced a hold-up. They were armed with a shotgun and .38 caliber pistol.<sup>[5]</sup>

Fortunato Lacambra III was ordered to lie down,<sup>[6]</sup> while Eduardo Zulueta was directed to go near the Car Wash Section.<sup>[7]</sup> At that instance, guns were poked at them.<sup>[8]</sup>

Appellant, who guarded Eduardo Zulueta, poked a gun at the latter and took the latter's wallet containing a pawnshop ticket and P50.00, while the companion of the former, hit the latter on his nape with a gun.<sup>[9]</sup>

Meanwhile, four members of the group went to the cashier's office and took the

money worth P3,000.00.<sup>[10]</sup> Those four robbers were also the ones who shot Edralin Macahis in the stomach.<sup>[11]</sup> Thereafter, the same robbers took Edralin Macahis' service firearm.<sup>[12]</sup>

After he heard successive gunshots, Eduardo Zulueta saw appellant and his companions immediately leave the place.<sup>[13]</sup> The robbers boarded the same vehicle and proceeded toward San Mateo, Rizal.<sup>[14]</sup> When the robbers left, Eduardo Zulueta stood up and found Julieta Amistoso, who told him that the robbers took her bag and jewelry. He also saw that Edralin Macahis had a gunshot wound in the stomach. He immediately hailed a vehicle which transported the injured Edralin Macahis to the hospital.<sup>[15]</sup> Later on, Edralin Macahis died at the hospital due to the gunshot wound.<sup>[16]</sup>

The following day, Eduardo Zulueta identified appellant as one of the robbers who poked a gun at him.<sup>[17]</sup>

However, according to appellant, from January 4 to 6, 2000, he stayed at the house of his Tita Emma at Pantok, Binangonan, Rizal, helping the latter in her canteen. On the evening of January 6, at approximately 9 o'clock, appellant asked permission from his Tita Emma to go to Antipolo. Catherine Homo, appellant's cousin and the latter's younger brother, accompanied appellant to the terminal. While waiting for a ride, the vehicle, a Tamaraw FX, of a certain Christian Gersalia, a relative of appellant and Catherine Homo, passed by. Catherine Homo asked Christian Gersalia if he would allow appellant to hitch a ride on his vehicle. Christian Gersalia agreed. Aside from Christian Gersalia, there were other passengers in the said vehicle.<sup>[18]</sup>

When the vehicle reached Masinag, where appellant was supposed to alight, he was not allowed to do so; instead, he was asked by the other passengers to join them in their destination. While on the road, appellant fell asleep. When he woke up, they were in a gasoline station. He then saw Christian Gersalia and the other passengers conducting a hold-up. He never left the vehicle and was not able to do anything because he was overwhelmed with fear. After he heard the gunshots, Christian Gersalia and the other passengers went to the vehicle and proceeded towards Marikina. On their way, they were followed by policemen who fired at them. The other passengers fired back at the policemen. It was then that the vehicle hit a wall prompting the other passengers to scamper in different directions leaving him behind. When the policemen arrived, he was immediately arrested.<sup>[19]</sup>

As a result of the above incident, four Informations for Robbery with Homicide were filed against appellant, Rudy Gersalia, Christian Gersalia, Dondon Brevuela, Jonathan Brevuela, Pantoy Servantes, an alias "Rey," an alias "Jonard," an alias "Precie," and an alias "Renato," which read as:

Criminal Case No. 4747

That on or about the 7<sup>th</sup> day of January 2000, in the Municipality of San Mateo, Province of Rizal, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together with Rudy Gersalia, Christian Gersalia, Dondon Brevuela, Jonathan Brevuela, Pantoy Servantes, Alias "Rey," Alias

"Jonard," Alias " Precie" and Alias "Renato" whose true names, identities and present whereabouts are still unknown and still at-large, and conspiring and mutually helping and assisting one another, while armed with unlicensed firearms and acting as a band, with intent of gain with aggravating circumstances of treachery, abuse of superior strength and using disguise, fraud or craft and taking advantage of nighttime, and by means of motor vehicle and by means of force, violence and intimidation, employed upon ENERGEX GASOLINE STATION, owned by Regino C. Natividad, and represented by Macario C. Natividad, did then and there willfully, unlawfully and feloniously rob, steal and carry away its cash earnings worth P3,000.00, to the damage and prejudice of said Energex Gasoline Station in the aforesaid amount of P3,000.00 and on the occasion of the said robbery, the above-named accused, while armed with unlicensed firearms with intent to kill, conspiring and confederating together with Rudy Gersalia, Christian Gersalia, Dondon Brenvuela, Jonathan Brenvuela, Pantoy Servantes, Alias "Rey," Alias "Jonard," Alias "Precie" and Alias "Renato," whose true names, identities and present whereabouts are still unknown and still at-large, did then and there willfully, unlawfully and feloniously attack, assault and shoot one EDRALIN MACAHIS, a Security Guard of Energex Gasoline Station, thereby inflicting upon him gunshot wound on his trunk which directly caused his death.

Contrary to law.

Criminal Case No. 4748

That on or about the 7<sup>th</sup> day of January 2000 in the Municipality of San Mateo, Province of Rizal, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating , together with Rudy Gersalia, Christian Gersalia, Dondon Brenvuela, Jonathan Brenvuela, Pantoy Servantes, Alias "Rey," Alias "Jonard," Alias " Precie" and Alias "Renato," whose true names, identities and present whereabouts are still unknown and still at-large and conspiring and mutually helping and assisting one another, while armed with unlicensed firearms and acting as a band, with intent of gain, with aggravating circumstances of treachery, abuse of superior strength and using disguise, fraud or craft and taking advantage of nighttime, and by means of a motor vehicle and by means of force, violence and intimidation, employed upon the person of JULIETA A. AMISTOSO, the Cashier of Energex Gasoline Station, did then and there willfully, unlawfully and feloniously rob, steal and carry away the following, to wit:

- a) One (1) ladies ring with sapphire stone valued at P1,500.00
- b) One (1) Omac ladies wristwatch valued at P2,000.00
- c) Guess black bag valued at P500.00
- d) Leather wallet valued at P150.00
- e) White T-Shirt valued at P175.00

to her damage and prejudice in the total amount of P4,325.00 and on the occasion of the said robbery, the above-named accused while armed with unlicensed firearms with intent to kill, conspiring and confederating

together with Rudy Gersalia, Christian Gersalia, Dondon Brenvuela, Jonathan Brenvuela, Pantoy Servantes, Alias "Rey," Alias "Jonard," Alias "Precie" and Alias "Renato," whose true names, identities and present whereabouts are still unknown and still at-large, did then and there willfully, unlawfully and feloniously attack, assault and shoot one EDRALIN MACAHIS, a Security Guard of Energex Gasoline Station, thereby inflicting upon him gunshot wound on his trunk which directly caused his death.

Contrary to law.

Criminal Case No. 4749

That on or about the 7<sup>th</sup> day of January 2000, in the Municipality of San Mateo, Province of Rizal, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together with Rudy Gersalia, Christian Gersalia, Dondon Brenvuela, Jonathan Brenvuela, Pantoy Servantes, Alias "Rey," Alias "Jonard," Alias "Precie" and Alias "Renato," whose true names, identities and present whereabouts are still unknown and still at-large, and conspiring and mutually helping and assisting one another, while armed with unlicensed firearms and acting as a band, with intent of gain, with aggravating circumstances of treachery, abuse of superior strength and using disguise, fraud or craft and taking advantage of nighttime, and by means of a motor vehicle and by means of force, violence and intimidation, employed upon EDRALIN MACAHIS, a Security Guard of Energex Gasoline Station, did then and there willfully, unlawfully and feloniously rob, steal, and carry away his service firearm .12 gauge shotgun with serial number 13265 valued at P12,000.00 owned by Alert and Quick (A-Q) Security Services Incorporated represented by its General Manager Alberto T. Quintos to the damage and prejudice of said Alert and Quick (A-Q) Security Services Incorporated in the aforesaid amount of P12,000.00 and on the occasion of the said robbery the above-named accused, while armed with unlicensed firearms, with intent to kill conspiring and confederating together with Rudy Gersalia, Christian Gersalia, Dondon Brenvuela, Jonathan Brenvuela, Pantoy Servantes, Alias "Rey", Alias "Jonard", Alias " Precie" and Alias "Renato", whose true names, identities and present whereabouts are still unknown and still at-large, did then and there willfully, unlawfully and feloniously attack, assault and shoot one EDRALIN MACAHIS, thereby inflicting upon him gunshot wound on his trunk which directly caused his death.

Contrary to law.

Criminal Case No. 4750

That on or about the 7<sup>th</sup> day of January 2000, in the Municipality of San Mateo, Province of Rizal, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together with Rudy Gersalia, Christian Gersalia, Dondon Brenvuela, Jonathan Brenvuela, Pantoy Servantes, Alias "Rey," Alias

"Jonard," Alias "Precie" and Alias "Renato," whose true names, identities and present whereabouts are still unknown and still at-large and conspiring and mutually helping and assisting one another, while armed with unlicensed firearms and acting as a band, with intent of gain, with aggravating circumstances of treachery, abuse of superior strength and using disguise, fraud or craft and taking advantage of nighttime, and by means of a motor vehicle and by means of force, violence and intimidation, employed upon the person of EDUARDO ZULUETA, a gasoline boy of Energex Gasoline Station, did then and there willfully, unlawfully and feloniously rob, steal and carry away the following to wit:

a) Pawnshop Ticket from M. Lhuiller Pawnshop for one (1) black Citizen men's watch (automatic) valued at P2,000.00

b) Cash money worth P50.00

to his damage and prejudice in the total amount of P2,050.00 and on the occasion of the said robbery, the above-named accused, while armed with unlicensed firearms with intent to kill, conspiring and confederating together with Rudy Gersalia, Christian Gersalia, Dondon Brenvuela, Jonathan Brenvuela, Pantoy Servantes, Alias "Rey," Alias "Jonard," Alias "Precie" and Alias "Renato," whose true names, identities and present whereabouts are still unknown and still at-large, did then and there willfully, unlawfully and feloniously attack, assault and shoot one EDRALIN MACAHIS, a Security Guard of Energex Gasoline Station, thereby inflicting upon him gunshot wound on his trunk which directly caused his death.

Contrary to law.

Upon arraignment on March 23, 2000, appellant, with the assistance of counsel *de parte*, entered a plea of not guilty on all the charges. Thereafter, trial on the merits ensued.

The prosecution presented five witnesses, namely: Macario C. Natividad,<sup>[20]</sup> then officer-in-charge of Energex Gasoline Station where the incident took place; Edito Macahis,<sup>[21]</sup> a cousin of the deceased security guard Edralin Macahis; Fortunato Lacambra III,<sup>[22]</sup> a gasoline boy of the same gas station; Eduardo Zulueta,<sup>[23]</sup> also a gasoline boy of the same gas station, and Alberto Quintos,<sup>[24]</sup> general manager of Alert and Quick Security Services, Inc., where the deceased security guard was employed.

The defense, on the other hand, presented two witnesses, namely: Catherine Homo,<sup>[25]</sup> a cousin of appellant and the appellant<sup>[26]</sup> himself.

On December 20, 2001, the RTC rendered its Decision<sup>[27]</sup> convicting appellant beyond reasonable doubt of all the charges against him, the dispositive portion of which reads:

1. In Criminal Case No. 4747, finding accused Marlon Albert de Leon y Homo guilty beyond reasonable doubt of the crime of Robbery with