

THIRD DIVISION

[G.R. No. 111704, March 17, 1999]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
GEORGE DE LA CRUZ Y CERCADA, ACCUSED-APPELLANT.**

DECISION

PURISIMA, J.:

This is an appeal from the Decision of Branch 95^[1] of the Regional Trial Court of Quezon City, convicting appellant George de la Cruz y Cercada of the crime of robbery with homicide.

At about 9:00 p.m. of February 28, 1993, Branch Cashier Liza Sebastian of Andresons Group, Inc. was in the cashier's office and had just concluded counting the money and checks representing the day's remittances when she heard footsteps coming her way.

Realizing that she was the only person left at the office aside from security guard Jaime Fabian, she inquired if there was anybody else in the office but nobody answered. Moments later, two armed men barged into her office and immediately announced a hold-up. One of the armed men, the herein appellant, held a bag, a jacket, and a bladed weapon, while the other had a gun. They advised Liza not to shout while asking her where the money was kept. Appellant then aimed his knife at Liza's neck and threatened her, "Putang-ina mo! Makisama ka sa amin kung ayaw mong mangyari ang nangyari sa guardiya nyo" while his companion poked his gun to her head with the following threat, "O, ano pare, pasabugin na natin, ang ulo nito."

Liza pleaded for her life and pointed to the vault where the money was kept. Immediately, the two men took the money amounting to not less than P139,669.00 (as evidenced by Exhibits "C" to "C-45"^[2], "H" to H-15"^[3], "I" to "I-21"^[4], and "J" to "J-9"^[5]) and after placing it in their bag, tied Liza's hands behind her back with two electric cords (Exhibits "A" and "B"^[6]). She was warned not to make any noise or shout unless she wanted to suffer the same fate as the security guard. The appellant also threatened that he would definitely go back for her. What appellant did next was to cover Liza's head with a jacket he was holding. Liza would later recount that it was the same jacket which she saw Jaime Fabian was wearing when she saw the latter at 7:00 p.m. of that day.

After the two armed men had fled, Liza tried to untangle herself from the electrical cords tied around her back and hollered for security guard Jaime Fabian to come to her aid. Having loosened herself from the cords, she ran to the guard's post and found no one so she proceeded to the guardhouse where she saw the lifeless body of Jaime Fabian lying in a pool of blood with hands and feet hogtied. Liza then sought police assistance.

On March 1, 1993, while being shown by the police pictures of possible suspects, Liza saw the picture of appellant herein. Liza was therefore brought by policemen to Caloocan City where in a vacant lot, she found and identified the herein appellant himself who was immediately arrested.

On March 3, 1993, appellant was charged with the crime of robbery with homicide, under an Information^[7] filed by the Office of the City Prosecutor of Quezon City, alleging:

"That on or about the 28th day of February, 1993, in Quezon City, Philippines, the above-named accused, conspiring, confederating with other person, whose true name, identity and whereabouts has not as yet been ascertained and mutually helping each other, with intent to kill, did then and there, wilfully, unlawfully and feloniously assault, attack and employ personal violence upon the person of JAIME FABIAN Y BATON, security guard of ANDRESONS GROUP, INC. located at the corner of EDSA and Quezon Avenue, this City, by then and there shooting him on his head, thereby inflicting upon him serious and mortal wounds which were the direct and immediate cause of his instantaneous death; and thereafter, said accused armed with a gun and knife rob the ANDRESONS GROUP, INC. in the following manner to wit: the said accused barged inside the cashier's room and once inside announced a hold-up and with the use of electrical cord hogtied LIZA SEBASTIAN, a cashier of said establishment, and emptied the company's vault amounting to P139,669.31 Philippine Currency, after which fled with their loot, to the damage and prejudice of the ANDRESONS GROUP, INC. herein represented by PAUL S. ITURRALDE, and the heirs of JAIME FABIAN Y BATON.

CONTRARY TO LAW."

With the accused pleading not guilty upon arraignment thereunder, trial ensued.

On August 24, 1993, the trial court came out with its Decision^[8] convicting appellant of the crime of robbery with homicide, and sentencing, thus:

"WHEREFORE, the Court finds accused George de la Cruz y Cercada guilty beyond reasonable doubt of the crime of robbery with homicide charged herein, defined and punished in Arts. 293 and 294(I) of the Revised Penal Code, as principal in the commission thereof and, accordingly, he is hereby sentenced to suffer the penalty of reclusion perpetua; to indemnify the Andresons Group, Inc. in the sum of P139,669.00 as actual damages and the heirs of the deceased Jaime Fabian in the sum of P342,000.00 as actual and compensatory damages and the further sum of P50,000.00 as death indemnity; and, to pay the costs, without prejudice to the application of Rep. Act NO. 6127.

SO ORDERED."

In convicting appellant, the trial court gave full credence to the eyewitness account of Liza Sebastian positively identifying the appellant as one of the persons who perpetrated the crime of robbery at her office. Appellant's defense of alibi did not

convince the trial court in the face of Liza's clear and categorical eyewitness account.

Appellant placed reliance on the assignment of errors, that:

I

THE TRIAL COURT ERRED IN GIVING WEIGHT AND CREDENCE TO THE TESTIMONY OF PROSECUTION EYEWITNESS LIZA SEBASTIAN THAT ACCUSED-APPELLANT COMMITTED THE CRIME CHARGED, AND IN DISREGARDING THE TESTIMONY OF THE ACCUSED-APPELLANT.

II

THE TRIAL COURT ERRED IN NOT ACQUITTING THE ACCUSED-APPELLANT ON THE GROUND OF REASONABLE DOUBT.

III

THE TRIAL COURT ERRED IN CONVICTING ACCUSED-APPELLANT OF THE CRIME OF ROBBERY WITH HOMICIDE DESPITE THE PROSECUTION'S FAILURE TO PROVE THE ATTENDANT HOMICIDE BEYOND REASONABLE DOUBT.

In support of the first and second assigned errors, appellant invites attention to what he branded as "inconsistencies and improbabilities" in the testimony of Liza Sebastian, to wit:

1. That it was Liza Sebastian's first time to see the appellant on February 28, 1993 at 8:00 p.m. Appellant contends that it was not the first time as he was formerly connected with the Andresons Group, Inc. as a security guard from July 12, 1991 up to February 17, 1993 when Liza Sebastian was already an employee of the company, having been employed since August 9, 1990.
2. That only she and security guard Jaime Fabian were left at the office at around 8:00 p.m. of February 28, 1993. Yet, the witness also testified that a few minutes before the robbery there were still five (5) salesmen together with Boy Corrales who were in the basketball court.
3. That Jaime Fabian was wearing the jacket (Exhibit "R") the last time she saw him before the hold-up. Yet the jacket is not even tainted with blood.
4. That she cannot remember the number of times she appeared and failed to appear before the trial court. Yet she recalls the exact number of times that she saw security guard Jaime Fabian.
5. That she claimed to have counted only about P140,000.00 when the Marketing Manager of Andresons Group, Inc. testified that the amount lost was PI39,669.00.