

FIRST DIVISION

[G.R. No. 129033, June 25, 1999]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
HIPOLITO BERMUDEZ Y VILLACORTA AND RENARIO MANLAPAZ
Y OCAMPO, ACCUSED. RENARIO MANLAPAZ Y OCAMPO,
ACCUSED-APPELLANT.**

D E C I S I O N

DAVIDE, JR., C.J.:

Accused-appellant RENARIO MANLAPAZ (hereafter MANLAPAZ) appeals from the judgment^[1] of conviction for murder and attempted murder in Criminal Cases Nos. 263-92 and 265-92 before the Regional Trial Court (RTC), Olongapo City, Branch 75.

The challenged decision resolved four criminal cases, to wit: (1) Criminal Case No. 263-92 for murder; (2) Criminal Case No. 264-92 for illegal possession of firearm and ammunition; (3) Criminal Case No. 265-92 for frustrated murder; and (4) Criminal Case No. 266-92 for violation of Republic Act No. 7166, an election offense. MANLAPAZ and Hipolito Bermudez were the accused in the first and third cases, while Bermudez was the lone accused in the second and fourth cases. The cases were filed with the different branches of the RTC. Upon motion of Bermudez, they were consolidated with Criminal Case No. 263-92 before Branch 75.

In the original informations^[2] in *Criminal Cases Nos. 263-92 and 265-92*, only Bermudez was accused of murder and frustrated murder, respectively. The informations were based upon the sworn statements of several witnesses,^[3] the autopsy report on Joseph Monteverde,^[4] the medico-legal certificate of Roberto Bagalawis,^[5] and two police reports.^[6] Bermudez sought a reinvestigation of the case, since the informations were filed without a preliminary investigation. Upon reinvestigation, MANLAPAZ was implicated as a co-conspirator in both charges. As a result, amended informations^[7] to include MANLAPAZ were filed.

During their arraignment Bermudez and MANLAPAZ entered a plea of not guilty. Bermudez jumped bail during the trial and has remained at large. The presentation of his evidence was waived by his counsel.^[8]

The evidence for the prosecution was summarized in the Appellee's Brief as follows:

It was about 4:00 o'clock in the morning of April 10, 1992, when Robert Bagalawis and Joseph Monteverde went to Richard's Restaurant along Rizal Avenue in Olongapo City to drink beer. In a table in front of them sat Hipolito Bermudez together with three (3) companions. In a table behind Bagalawis and Monteverde sat appellant Renario Manlapaz, also with three (3) companions (pp. 7-10, TSN, April 27, 1993; p. 43, TSN,

August 24, 1993).

Monteverde and Bermudez happened to stare at each other. This caused a quarrel to ensue between them, with Bermudez slapping Monteverde on the face. Appellant tried to join the fray but was prevented from doing so by a security guard (pp. 8-9, TSN, April 27, 1993; p. 45, TSN, August 24, 1993).

After the incident, appellant and Bermudez left the restaurant together with their companions. Bagalawis and Monteverde left the restaurant some time later. On the street, Bagalawis noticed an "owner-type" jeep parked near Wimpy's restaurant some 30 meters from Richard's Restaurant. Bagalawis and Monteverde start[ed] walking towards 18th Street but noticed that the jeep was following them. Hearing a gunshot, Bagalawis glanced back and saw appellant, Bermudez and a group of women on board the jeep. Bermudez was driving while appellant was on the front passenger side (pp. 10, TSN, April 27, 1993). The shot heard by Bagalawis hit Monteverde. The latter was able to run away. Bagalawis then saw appellant in a standing position. He heard three (3) more shots, with appellant aiming a gun and firing at him (Bagalawis), hitting him in his left hand and right foot. Bagalawis ran towards the jeep and punched its driver, accused Bermudez. Appellant, however, was able to get control of the jeep and drive away (pp. 13-19, TSN, April 27, 1993).

Bagalawis was brought to the Olongapo City General Hospital by a police aide. While in the hospital, a policeman arrived with a man in handcuffs whom he recognized as Hipolito Bermudez. When asked by the policeman, he identified Bermudez as the one driving the jeep. He learned from a hospital attendant that Monteverde died on the same day, April 10, 1992 (pp. 8-10, 16-17, TSN, August 24, 1993).

Dr. Richard Patilano, a medico-legal officer of Olongapo City, determined the cause of death of Monteverde to be hypovolemic shock and neurogenic shock due to gunshot wound. The autopsy he conducted on the victim showed a point of entry of a gunshot at the lower right side of the neck. The bullet recovered from the body of the victim, which he said could have been fired from a .45 caliber firearm, went downwards, crossed the right clavicle and ended up in the left lobe of the lung. Powder burns on the point of entry indicate that the assailant was near the victim. The downward angle of the wound shows that the shot was fired from above (pp. 5-17, TSN, April 13, 1993; p. 5, TSN, August 10, 1993).

For his part, Dr. Rolando Ortiz II, a senior physician of the Olongapo City General Hospital, certified that Bagalawis sustained the following wounds: "Point of entry .5 x .5 cm. 2 ½ cm. below the lateral malleolus of the right foot; point of exit .7 x .7 cm. plantar aspect heel right. Point of entry .4 x .4 cm. dorsal aspect carpo phalangeal joint 5th digit left hand; point of exit .6 x .6 cm. lateral side carpo phalangeal joint of the 5th digit left." (pp. 16-17, TSN, April 27, 1993; p. 3, TSN, September 27, 1994).

On the other hand, MANLAPAZ had alibi for his defense. He testified that in the evening of 10 April 1992, he, his wife, daughter and driver ate in a restaurant. Bermudez was nowhere in sight. They went home before midnight. He failed to mention to his driver, who had gone home, of his planned trip to Pampanga the following morning; he thus commuted by bus. He went to Pampanga to buy scrap materials. He stayed there for two days. Upon his return to Olongapo City in the evening of 13 April 1992, his wife informed him that their vehicle was seized by the police. It was the same vehicle which they used in the evening of 10 April 1992, when they ate in a restaurant. He merely instructed his wife to arrange for the release of the vehicle. He was not questioned or subpoenaed by the police in connection with the death of Joseph Monteverde and the shooting of Robert Bagalawis. He denied knowing either man. Neither was he aware that Bermudez implicated him in both crimes.^[9]

MANLAPAZ claimed that he was engaged in the scrap business. In 1992 he came to know Bermudez, from whom he bought scrap materials. In February of that year, Bermudez approached him for a loan. His refusal to lend offended Bermudez, who forewarned him that should he buy scrap materials from other sources something would happen to him and his business would close down. That was the last time he saw Bermudez.^[10]

Marites Manlapaz, appellant's wife, corroborated his testimony. On 10 April 1992, after closing their store at 9:00 p.m. she invited her husband for a snack in a restaurant. Accompanied by her daughter and the driver, they rode in the family's Isuzu pick-up vehicle. They left at midnight and proceeded home and slept. She and MANLAPAZ awoke at 6:00 a.m. MANLAPAZ went by bus to Pampanga to buy scrap materials. That afternoon police authorities arrived and informed her that their vehicle was involved in an incident, which occurred in the restaurant where they ate. She was able to have their vehicle released after the police officer claimed that it was probably a mistake.^[11]

Reynaldo Querubin testified that he served as appellant's driver from 1990 to 1995. In the evening of 10 April 1992, he drove for MANLAPAZ, his wife and daughter. They went to a restaurant to eat and stayed there until midnight. After driving the family home, he proceeded home. He claimed that MANLAPAZ did not know how to drive and did not have a driver's license.^[12]

Antonio Miclat was a traffic aide. In the evening of 10 April 1992 he was on duty and assigned at the *rotonda*, Ulo ng Apo, Olongapo City. At around 4:00 a.m. the following day his assistance was sought, for a commotion was taking place inside a restaurant. On his way he saw a security guard leaving with the suspect, whom he later learned to be Bermudez. The suspect boarded an owner-type jeep parked outside. The suspect had three female companions inside the jeep. Afterwards, two teenagers left the restaurant by foot. He noticed that the jeep tailed the teenagers, keeping a safe distance. At that time he was near the jeep, conducting the traffic. He then heard a laughter and a gunshot. The jeep swerved and was parallel to one of the teenagers, who was midway crossing the street. This was followed by three more gunshots coming from the jeep, which sped away towards Manila. A wounded teenager approached him and eventually died. He immediately proceeded to the police station to report the shooting and the plate number of the speeding jeep. He denied having seen MANLAPAZ at the scene of the crime.^[13]

Benjamin Apaling testified that he was a security guard of the restaurant where the altercation between the accused and the victims occurred. At about 4:00 a.m. of 4 April 1992, a man whom he later identified as Bermudez arrived at the restaurant with three ladies. A while later two male friends entered the restaurant. They passed by Bermudez and tapped the table he occupied. The two friends seated themselves nearby. An exchange of glances transpired between the two groups. Bermudez finally approached the other table and cursed one of the friends, who just kept quiet. The other friend instead cursed at Bermudez. Bermudez then slapped and aimed a gun at the friend who remained quiet. Apaling immediately tried to pacify them and then left to seek help. He chanced upon Antonio Miclat, who responded but failed to follow him. Upon his return he saw Bermudez and his three female companions leaving the place. In a few minutes, the two male friends paid their bill and also left. He later learned of the shooting incident involving the two groups. The police came and questioned him. He denied having seen MANLAPAZ in the restaurant during the commotion between Bermudez and the two male friends.^[14]

In its decision,^[15] the trial court convicted MANLAPAZ and Bermudez for the murder of Joseph Monteverde and for the attempted murder of Robert Bagalawis. It acquitted Bermudez in the cases for illegal possession of firearm and ammunition, and for violation of Republic Act No. 7166. The dispositive portion of the decision reads as follows:

WHEREFORE, and viewed from the foregoing considerations, the Court renders judgment in the following manner:

1. In Criminal Case No. 263-92, the Court finds the accused Hipolito Bermudez y Villacorta and Renario Manlapaz y Ocampo guilty beyond reasonable doubt of the crime of murder as principals by direct participation and are hereby sentenced to suffer the penalty of *reclusion perpetua* with all the accessory penalties attached thereto; and to indemnify the heirs of the deceased Joseph Monteverde, jointly and severally, the amount of P50,000.00 as moral damages, the amount of P30,000.00 and P20,000.00 as exemplary damages.
2. In Criminal Case No. 265-92, the Court finds the accused Hipolito Bermudez y Villacorta and Renario Manlapaz y Ocampo guilty beyond reasonable doubt of the offense of Attempted Murder and are hereby sentenced to suffer an indeterminate prison term of four (4) years and two (2) month of *prision correccional* as minimum to eight (8) years and one (1) day of *prision mayor* as maximum, and to pay the victim Roberto Bagalawis, jointly and severally, the amount of P30,000.00 as moral damages, and P20,000.00 as exemplary damages.
3. In Criminal Case No. 264-92 for violation of Presidential Decree [No.] 1866 (Illegal Possession of Firearm and Ammunition), and Criminal Case No. 266-92 for violation of Section 32, Republic Act [No.] 7166 (Omnibus Election Code), the accused Hipolito Bermudez y Villacorta is acquitted.

Entry of judgment^[16] was made against Bermudez.

MANLAPAZ appealed the decision. He asserts that he was not at the scene of the crime and his defense of alibi was corroborated by two disinterested witnesses, a traffic aide and the restaurant's security guard. He also emphasizes that his last encounter with Bermudez was marred by a disagreement over a loan proposal, with the latter even threatening him as they parted. There could then be no conspiracy.

In his attempt to cast doubt on the credibility of the eyewitness Roberto Bagalawis, MANLAPAZ points out omissions in Bagalawis' sworn statement and inconsistencies in his testimony. According to him, Bagalawis' sworn statement^[17] failed to mention MANLAPAZ or state that MANLAPAZ held a gun and fired at the victims. It also omitted the exchange of words between Bermudez and Monteverde. As to Bagalawis' testimony, the same was fraught with inconsistencies. While Bagalawis claimed that the place was well lit, he later declared that the site where the jeep was parked was not lighted. He even changed his statement that there were eight people who boarded the jeep. He likewise denied in his testimony the allegation in his sworn statement that the jeep bumped him and Monteverde.

Additionally, MANLAPAZ claimed that the sworn statement^[18] of Antonio Miclat only identified Bermudez. The same holds true with the subsequent sworn statements^[19] of Elizabeth Puno and Wilmafe Miller, who recanted their original affidavits and positively declared that MANLAPAZ was not in the jeep during the alleged shooting.

As to the nature of the crimes, MANLAPAZ contends that treachery was not established. The altercation in the restaurant was a forewarning to the victims of an impending danger. The suddenness of the attack is not synonymous with treachery. Moreover, the evidence show that the victims suffered frontal wounds.

Lastly, MANLAPAZ asserts that the prosecution failed to prove his guilt beyond reasonable doubt and that the award of moral and exemplary damages are unfounded.

In the Brief for the Appellee, the Office of the Solicitor General (OSG) argues that the inconsistencies cited by MANLAPAZ were minor in character and did not affect the credibility of Roberto Bagalawis. Anent the omissions in his affidavit, the OSG asseverates that affidavits are generally incomplete and lacking of details. In any event, the trial court found Roberto's testimony to be credible and straightforward.

The OSG asserts that conspiracy was inferred from the acts of both MANLAPAZ and Bermudez, which showed a common criminal design. MANLAPAZ was positively identified to have held and fired the gun. Anent his defense of alibi the same must fail, since MANLAPAZ failed to prove that it was physically impossible for him to have been at the scene of the crime.

However, the OSG agrees with MANLAPAZ that treachery cannot be appreciated because the prosecution failed to prove how the attack began. Roberto Bagalawis did not see MANLAPAZ fire the first shot. It was only after hearing the first shot did Bagalawis look behind. Treachery cannot be based on mere conjectures.

Lastly, the OSG observes a clerical error in the trial court's award of damages. It