

THIRD DIVISION

[G.R. No. 121483, October 26, 1999]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ROMANO MANLAPAZ Y MARIMLA, RENATO PENA Y BUAN - (AT
LARGE), ACCUSED. ROMANO MANLAPAZ Y MARIMLA, ACCUSED-
APPELLANT.**

DECISION

GONZAGA_REYES, J.:

Before us is an appeal from the decision^[1] of the Regional Trial Court (RTC) of Angeles City, Branch 59, dated August 24, 1995, finding the accused-appellant ROMANO MANLAPAZ y MARIMLA guilty beyond reasonable doubt of the crime of Robbery with Homicide in Criminal Case No. 92-484.

The accused-appellant, Romano Manlapaz (MANLAPAZ) was charged together with Renato Pena y Buan the crime of Robbery with Homicide in an amended information^[2] that reads:

“That on or about the 18th day of May, 1992, in the City of Angeles, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and mutually aiding and abetting one another, with intent of gain and by means of force, violence and/or intimidation of person, rob, steal, take and carry away from ISRAEL A. LACSON cash money in the amount of P100.00 more or less, against his will and consent and the accused in pursuance of and on the occasion of said Robbery, with treachery and abuse of superior strength, did then and there willfully, unlawfully and feloniously with intent to kill, attack, assault, shoot and hit the victim on the head, thereby inflicting upon the latter gunshot wound, causing the death of the said ISRAEL A. LACSON.

ALL CONTRARY TO LAW.”

On July 2, 1992, the accused was arraigned and entered a plea of not guilty to the crime charged.^[3] Renato Pena remained at large.

The lower court summarized the facts as follows:

“A perusal of the evidence presented shows that on May 18, 1992, victim Israel Lacson and witness Ruel Lopez Dayrit were on board the passenger jeepney of the former plying the route from Dau, Mabalacat, Pampanga, going towards Angeles City proper. Along Henson Street at the railroad crossing, they picked up two (2) male passengers. Upon reaching Henson Street in front of Sembrano Battery Shop, one (1) of the two (2) male passengers ordered the driver, Israel Lacson to stop as they were to

alight from the said vehicle. Israel Lacson stopped the vehicle and demanded payment for the fare. Instead of paying the fare, the two (2) passengers poked their guns at Israel Lacson. One of them suddenly held the head of Ruel Lopez Dayrit who was occupying the front seat beside the driver, while the other grabbed the money box. When Israel Lacson refused to give the money box, he was shot at the head causing his death. Ruel Lopez Dayrit identified accused Romano Manlapaz as one of the two (2) passengers who held them up by taking the box containing the passengers' fares and in the process killing the victim-driver.

The widow incurred expenses for hospitalization in the sum of P3,500.00 (Exh. D and submarkings), for burial and funeral expenses in the sum of P3,500.00 (Exh. "I") and P7,500.00 (Exh. "F").

The defense put up by the accused is a bare denial. Although he admitted having boarded the passenger jeepney being driven by the victim at that time and having witnessed the incident, he denied being one of the two (2) perpetrators of the crime. His mere denial as against his positive identification made by eyewitness Roel Lopez Dayrin will certainly crumble. He never reported the incident to the police. The defense failed to establish any ill motive on the part of the principal witness for the prosecution as to why the accused should be implicated falsely.

Although the prosecution was not able to prove actual agreement of conspiracy, the same can be deduced from the acts of the two (2) accused. Both accused boarded the jeepney at the same time. They poked their guns at the victim and after shooting the victim both left the scene of the crime together. When there is conspiracy, the act of one is the act of all. It is no longer necessary to determine the identity of the actual person who shot the victim.

Par. 1 of Article 294 of the Revised Penal Code provides that when by reason or on occasion of the robbery, the crime of homicide shall have been committed, the penalty of *reclusion perpetua* to death shall be imposed. There being no modifying circumstances in attendance, the penalty imposable in this case is *reclusion perpetua*."^[4]

On June 26, 1995, the lower court rendered its decision finding accused MANLAPAZ guilty beyond reasonable doubt of the crime of Robbery with Homicide, the dispositive portion of which reads:

"WHEREFORE, finding the accused, ROMANO MANLAPAZ y MARIMLA, guilty beyond reasonable doubt of the crime of Robbery with Homicide, said accused is hereby sentenced to suffer the penalty of *reclusion perpetua*. He is also ordered to pay the heirs of the victim Israel Lacson the sum of P3,500.00 for hospitalization expenses and P11,500.00 for burial and funeral expenses and the sum of P50,000.00 as indemnity."^[5]

Hence, this appeal where the accused-appellant assigns the following error:

"THE COURT A QUO MANIFESTLY ERRED IN CONVICTING APPELLANT OF THE CRIME CHARGED DESPITE THE FACT THAT HIS GUILT WAS NOT PROVED BEYOND REASONABLE DOUBT."^[6]

Accused-appellant admits that he was a passenger of the jeep of the victim, Israel Lacson (LACSON) but denies that participated in the commission of the crime. He insists that when he boarded the jeep he sat himself at the back of the jeepney as there were already several passengers on board at that time. Then the man seated behind the driver ordered the driver to stop the jeep when they were in front of the battery shop; as soon as the driver stopped the jeep, he heard an explosion and he saw the driver fall down as a result of a gunshot fired by the man seated behind the driver. He then alighted from the jeep and ran away together with the other passengers. As soon as he arrived home, he told his mother about the incident. The police arrested him the next day and he was brought to the police station where he saw Ruel Lopez Dayrit (DAYRIT) for the first time.

In support of his claim, accused-appellant argues that he was not clearly, convincingly and positively identified as the perpetrator of the crime charged. Prosecution witness DAYRIT did not have ample opportunity to see the faces of the alleged malefactors; and in fact did not actually see who fired the gun. Moreover, DAYRIT could not have positively identified him because he himself admitted that he was in shock after the incident occurred. The fact that he also failed to recall the caliber of the guns being carried by the robbers demonstrates his inability to recall the events that transpired that night. Consequently, his recollection of what actually occurred is necessarily tainted.

Accused-appellant also claims that the prosecution failed to prove the existence of a conspiracy in view of the unpersuasive, unreliable and incredible testimony of DAYRIT. A conspiracy is not presumed but must be proven beyond reasonable doubt.

We resolve to affirm the judgment of conviction.

Accused-appellant attacks the credibility of the prosecution witness, DAYRIT, and claims that his identification of accused-appellant was not positive. We have carefully gone over the records and find nothing in his account of the events that would show that his testimony suffers from incredibility. He testified as follows:

“FISCAL BUAN TO DAYRIT ON DIRECT EXAMINATION:

Q: On May 18, 1992, around 10:00 o'clock in the evening, where were you if you still recall?

A: I was with Israel Lacson, sir.

Q: What were you doing with your companion Israel Lacson, if you were doing anything?

A: We were flying our route, sir.

Q: You said you were flying your route Mr. Witness, who was driving at that time between you and Israel Lacson?

A: Israel, sir.

Q: How about you, what were you doing then?

A: I was beside him, sir.

Q: On that particular date and time Mr. Witness, where were you heading?

A: We were heading Angeles City from Dau.

Q: So you were trying to impress this Court you were accompanying Israel Lacson while flying his route?

A: He took me along with him.

Q: While you accompanied Mr. Lacson in flying his route, do you recall if you take-in passenger?

A: Yes, sir.

Q: And do you recall that place where you had the occasion to pick-up passenger?

A: At crossing, sir.

Q: When you picked-up passengers on that time, do you recall how many you picked up?

A: Yes, sir, two.

Q: And these two persons, what sex do they belong?

A: Male, sir.

Q: These two persons who boarded your jeepney, where did they sit?

A: At our back, sir.

Q: While you were on board of the jeepney, Mr. Witness, do you recall of any unusual incident?

A: Yes, sir.

Q: And what was that unusual incident that you recall?

A: While they were on board the jeep, they informed us to stop in front of Sembrano.

Q: What did you do when they asked that the jeep be stopped in front of Sembrano Battery Shop?

A: The two male persons alighted.

Q: What happened next if any?

A: Israel asked for their fare since they did not pay.

Q: When the two persons who alighted did not pay, what did you do if you did anything?

A: Israel asked for their fare and they were near Israel on the side of the jeep.

Q: What did they do when they went on the side of Israel?

A: They poked a gun to israel.

Q: Who poked a gun?

A: Both of them, sir.

Q: Aside from pointing a gun to Israel, what else did they do if they did anything?

A: They took the money from him.

Q: And the money which was taken from Israel, where was it located?

A: At the box where the money are being placed.

Q: Were they successful in taking the money?

A: He refused to give them.

Q: What happened next after Israel Lacson refused to give this box of money to these persons?

A: One of them pulled me outside of the vehicle.

Q: How did he pull you out?

A: He held me by the head, sir.

MS. GARCES: (OIC)

Witness demonstrating by holding his hair.

FISCAL BUAN: (to witness)

Q: Towards what direction were you pulled by this person?

A: Away from the driver.

Q: After you were pulled by one of these persons, what happened?

A: The two persons fired a shot.

Q: Do you know if someone was shot by the fire?

WITNESS:

A: Yes, sir, there was.

Q: Who was that person whom you know was shot by that gunshot?

A: Israel.

Q: Did you see Israel when he was shot?

A: I just saw him stumble on my lap, sir.

Q: Were you able to see what part of his body was shot?

A: Yes, sir.

Q: What part was that?