

## SECOND DIVISION

[ G.R. No. 110829, April 18, 1997 ]

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
MANUEL DIAZ Y TULIPAS, EDDIE LUTO Y SANIANO AND ARNALD  
ANGQUILO Y CALDERON, ACCUSED-APPELLANTS.**

### D E C I S I O N

**PUNO, J.:**

This is an appeal from the June 14, 1993 Decision<sup>[1]</sup> of the Regional Trial Court of Quezon City (Branch 95), finding accused-appellants Manuel Diaz, Eddie Luto and Arnald Angquilo guilty of the crime of robbery with homicide.

The Information,<sup>[2]</sup> to which accused-appellants pleaded not guilty, reads:

"That on or about the 30th day of October, 1992, in Quezon City, Philippines, the above-named accused, conspiring together, confederating with another person whose true name and identity have not as yet been ascertained and mutually helping one another, with intent to gain and by means of violence and intimidation, did then and there wilfully, unlawfully and feloniously rob one FERDINAND FURIGAY y PUA in the following manner, to wit: on the date and place aforementioned, accused pursuant to their conspiracy, with intent to kill entered the office of Ferdinand Furigay y Pua located at Roosevelt Rice Center at No. 223-E Roosevelt Avenue, Barangay San Antonio, this City, and once inside, armed with handguns, did then and there wilfully, unlawfully and feloniously attack, assault and employ personal violence upon the person of Ferdinand Furigay y Pua by shooting him on the neck, causing injuries which were the direct and immediate cause of his death, and thereafter, took, robbed and carried away the latter's one (1) 9mm automatic pistol with Serial No. 008670 worth P42,000.00 and the store days (sic) earnings amounting to P25,000.00 all in the total amount of P67,000.00, Philippine Currency, to the damage and prejudice of the said offended party in the total amount of P72,000.00, Philippine Currency."

Evidence for the prosecution established that on October 30, 1992, at about 6:00 p.m., while Ferdinand Furigay was in his office at 223-E Roosevelt Ave., Brgy. San Antonio, Q.C., and his employees, Melchor Bacani and Conrado Caliguiran, were in front of the establishment,<sup>[3]</sup> accused-appellants together with two (2) John Does came.<sup>[4]</sup> Accused Diaz asked Caliguiran where his boss was. After Caliguiran replied that his boss was inside the office, Diaz entered the establishment and went to Furigay's office. Accused Luto, Angquilo and the two (2) John Does posted themselves outside the establishment.<sup>[5]</sup>

After a short while, a gunshot was heard from Furigay's office.<sup>[6]</sup> Caliguiran first hid

himself behind the establishment's door after hearing the shot.<sup>[7]</sup> Caliguiran and Bacani were unable to enter immediately Furigay's office because Diaz poked his gun at them on his way out.<sup>[8]</sup> They also saw a gun tucked in the waist of Diaz, which gun they recognized as the 9mm automatic pistol of Furigay.<sup>[9]</sup> Accused-appellants then fled together from the scene of the crime.<sup>[10]</sup>

When Bacani and Caliguiran were finally able to enter Furigay's office, they saw him slumped in his chair with a bullet wound on his neck.<sup>[11]</sup> They rushed him to the Chinese General Hospital.<sup>[12]</sup> The next day, they reported the incident to the police authorities.<sup>[13]</sup> Furigay died on November 13, 1992. His gunshot wound proved fatal. The bullet injured his vertebrae including his spinal cord. For his hospitalization and funeral, his family spent P112,118.28.<sup>[14]</sup>

On January 8, 1993, Bacani and Caliguiran were again summoned by the police authorities to the La Loma police station. They were made to identify the accused-appellants who were earlier apprehended along North Avenue, Quezon City, in front of Peach Blossoms Restaurant on the basis of a robbery complaint filed by one Atty. Ronquillo.<sup>[15]</sup> Recovered from Diaz' possession at the time of the arrest were a pistol with its magazine and five bullets which upon verification turned out to belong to Furigay.<sup>[16]</sup>

For their part, accused-appellants interposed the defenses of alibi and denial.

*Manuel Diaz* claimed that from September 15, 1992 to December 20, 1992, he and his wife were in Catarman, Samar, having been informed by his mother that his father, Martillano Diaz, was ill.<sup>[17]</sup> In particular, on October 30, 1992, at about 6:00 p.m., he met his close friend, NELSON MEGENIO, who even inquired about the condition of his father.<sup>[18]</sup> His father died on November 3, 1992.<sup>[19]</sup> *A perusal of the death certificate submitted by Diaz would however show that the deceased was "Martin Oronos" and not "Martillano Diaz."*<sup>[20]</sup>

Contrary to the police version, Diaz declared he was arrested at Onyx corner Francisco Streets, San Andres Bukid, Manila, on January 5, 1993.<sup>[21]</sup>

*Eddie Luto* alleged that on October 30, 1992, from about 2:00 p.m. to about 7:30 p.m., he was at the house of his business partner, MARCELO ROBINACION, at Sitio Militar, Project 8, Quezon City.<sup>[22]</sup> They arranged first the canvass materials they were going to sell.<sup>[23]</sup> At about 6:00 p.m., they started drinking gin.<sup>[24]</sup> This went on until 7:30 p.m. when his wife, REBECCA LUTO, fetched him.<sup>[25]</sup> Luto further testified that he was arrested by the police in the early morning of January 6, 1993 while he was at his residence at Sitio Militar.<sup>[26]</sup>

Arnald Angquilo stated that on October 30, 1992, he was at his place at 1452 Gana Compound, Balintawak, Q.C., attending to his children and wife, LERMA RIVERA, who just gave birth to their third child on October 27, 1992.<sup>[27]</sup> At about 2:00 p.m., he fixed their room with the help of a neighbor, ROMEO ZABALA.<sup>[28]</sup> At 5:00 p.m., he took a rest and fed his children.<sup>[29]</sup> Thereafter, at about 6:30 p.m., he went to his lessor's place upstairs to watch television with Romeo Zabala.<sup>[30]</sup> It was about

7:30 p.m. when he finally went down to their room and put his children to sleep.<sup>[31]</sup> He said that he was arrested at his residence at about 5:00 a.m. on January 6, 1993.<sup>[32]</sup>

The accused were convicted by the trial court and sentenced, thus:

"WHEREFORE, the Court finds accused Manuel Diaz y Tulipas, Eddie Luto y Saniana, and Arnald Angquilo y Calderon all guilty beyond reasonable doubt of the crime of robbery with homicide charged herein, defined and punished in Art. 294(1) of the Revised Penal Code, as principals in the commission thereof and, accordingly, they are hereby sentenced each to suffer the penalty of reclusion perpetua; jointly and severally to indemnify the heirs of the deceased Ferdinand Furigay in the sum of P112,118.28 as actual damages and in the further sum of P50,000.00 as death indemnity; and, to pay the costs proportionately, without prejudice to the application of Republic Act No. 6127. The return to their lawful owner/s of the subject items of property marked in evidence as Exhibits E thru G, inclusive, is hereby ordered subject to applicable licensing and clearance requirements."

In their brief,<sup>[33]</sup> accused-appellants assigned the following errors:

1. THE TRIAL COURT GRAVELY ERRED IN GIVING CREDENCE TO THE INCREDIBLE, UNRELIABLE AND UNWORTHY TESTIMONIES OF THE PROSECUTION WITNESSES.
2. THE TRIAL COURT GRAVELY ERRED IN RULING THAT CONSPIRACY WAS PRESENT IN THE INSTANT CASE AND IN FINDING ALL THE ACCUSED GUILTY OF THE CRIME CHARGED DESPITE FAILURE ON THE PART OF THE PROSECUTION TO PROVE THEIR GUILT BEYOND REASONABLE DOUBT.
3. THE TRIAL COURT GRAVELY ERRED IN GIVING IMPRIMATUR TO THE SEARCH, SEIZURE AND ARREST CONDUCTED ON THE THREE ACCUSED HEREIN NOTWITHSTANDING THE FACT THAT THESE WERE MADE IN CLEAR VIOLATION OF THEIR CONSTITUTIONAL RIGHTS.

The appeal is without merit.

Appellants contend that the prosecution has failed to establish their identity and participation in the crime considering that none of the witnesses for the prosecution saw the crime. Allegedly, these witnesses were not able to enter the store upon hearing the gunshot because they were prevented by a man who wore dark eyeglasses and who poked a gun at them.

The records will show that Bacani and Caliguiran positively identified Diaz, Luto and Angquilo as the perpetrators of the crime:

**MELCHOR BACANI**

**DIRECT EXAMINATION**

**Q** Now, on such date (October 30, 1992) and time (6:00 p.m.), Mr. Witness, was there any untoward incident that

happened?

**A** Yes, sir.

**Q** What was this untoward incident (sic) happened, Mr. Witness?

**A** While I was washing the car, I noticed a person enter, sir.

**Q** Where did this person enter, Mr. Witness?

**A** Inside the store, sir.

**Q** Is this person whom you said on such date and time, if he is present in court, can you identify him? (sic)

**A** Yes, sir.

**Q** Will you please look around in (sic) this courtroom and inform this Honorable Court if this person whom you said you saw entered (sic) the store of Ferdinand Furigay is inside this courtroom, Mr. Witness?

**A** That person is here, sir.

**Q** Can you please point out (sic) to this person, Mr. Witness?

**A** (witness went down the stand and approached the first row and pointed to the person of accused Manuel Diaz)

**Q** Now, Mr. Witness, what happened after this person whom you identify (sic) as Manuel Diaz entered the store of Ferdinand Furigay?

**A** After a short while, I heard a shot, sir.

**Q** From where did you heard (sic) this shot, Mr. Witness?

**A** Inside the office of my employer, sir.

**Q** And what happened after you heard a shot from the office of your employer, Mr. Witness?

**A** I stopped cleaning the car and I was about to enter the office, sir.

**Q** And were you able to enter the office, Mr. Witness?

**A** No more, sir.

**Q** :Why, (sic) were you not able to enter the office of your employer, Mr. Witness?

**A** Because when I was about to enter the office I met that person (witness pointing to the accused Manuel Diaz) and he poked a gun at me and I was not able to enter the office anymore, sir.

**Q** Now, what happened after that, after he poked his gun at you, Mr. Witness?

**A** They run (sic) away, sir.

**Q** Now, Mr. Witness, you said that after Manuel Diaz poke (sic) a gun at you they fled away. To whom are you referring, Mr. Witness, when you use (sic) the word "they"?

**A** The three of them, sir. (witness pointing to the three accused Manuel Diaz, Eddie Luto, and Arnald Angquilo)"

style="color: rgb(255, 0, 0);">[34]

#### CROSS-EXAMINATION

- Q** Mr. Witness, at 6:00 o'clock in the evening of October 30, 1992, you said you were cleaning the car of Ferdinand Furigay. Is that correct?
- A** Yes, sir.
- Q** And for that reason your attention was focused on cleaning the said car. Is that correct?
- A** No, sir.
- Q** Aside from cleaning or washing the car of Ferdinand Furigay, what else were you doing?
- A** Nothing more, sir.
- Q** You mention (sic) the office of Ferdinand Furigay. Where is it located inside the store?
- A** Near the door, sir.
- Q** And his office (sic) seen from the outside when the store is opened?
- A** Yes, sir.
- Q** Aside from the three accused you identified a while ago, were there other persons inside the store at that time?
- A** No other, sir.
- Q** Mr. Witness, you mean to say that Mr. Ferdinand Furigay, himself, is acting as a cashier on (sic) that store?
- A** Yes, sir.
- Q** Was any one of the three accused wearing dark eye glasses?
- A** Yes, sir.
- Q** Who?
- A** Him, sir. (witness pointing to the person of accused Manuel Diaz)
- Q** Did Ferdinand Furigay have any companion in his house?
- A** No one sir, he was alone at that time." [35]

#### **CONRADO CALIGUIRAN DIRECT EXAMINATION**

- Q** On the same date (October 30, 1992) and time (6:00 p.m.), what were you doing in that store (Roosevelt Rice Center)?
- A** I was just sitted (sic) there, guarding, sir.
- Q** And did you notice if there was any unusual incident (sic) happened during that time?
- A** Yes, sir.
- Q** What was that?
- A** There was a man who asked me where my boss was.