

THIRD DIVISION

[G.R. Nos. 112716-17, December 16, 1996]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
EDUARDO S. HERBIAS ALIAS "EDDIE" ACCUSED-APPELLANT.**

D E C I S I O N

BELLOSILLO, J.:

JEREMIAS SALADIO drove his PUJ-type jeepney at around 7:30 in the morning of 30 November 1992 towards Plastic City in Valenzuela where he worked. Seated with him in front were his sister Amparo Saladio Labrador and his nephew Julie Capillo; at the back were some of their co-workers. While cruising along Santiago Street Jeremias slackened his speed in front of the gate of Meyer Steel Pipe Corporation in Lingunan due to vicious potholes on the way. As he slowed down, two men on board a motorcycle suddenly appeared on the left side of his jeepney and without any warning the man behind the driver of the motorcycle fired at Jeremias and hitting him several times. Julie Capillo jumped out of the jeepney on the right followed by Jeremias' sister Amparo. Although already wounded, Jeremias managed to leapfrog out of his vehicle and instinctively threw his lunch bag at his assailants. Then he plunged himself at the driver of the motorcycle and pulled him down to the ground while the other assailant continuously fired at Jeremias until he ran out of bullets. The assailants driver then hastily threw his gun to the triggerman who again turned to Jeremias to finish him off. The duo thereafter nonchalantly boarded their motorcycle and drove away leaving behind Jeremias lying prostrate on the ground. He sustained five (5) gunshot wounds: on his forehead, at the back of his head, on his face, on his left arm and on his right buttocks. The two head wounds were instantaneously fatal.^[1] Amparo and Julie boarded the lifeless body of Jeremias in their jeepney. It was at this juncture that they discovered that Edgardo Manansala, one of their co-workers who was with them in their jeepney, was hit in the abdomen.

The ghastly killing was reported to the police and Eduardo Herbias was subsequently apprehended while the motorcycle used in the perpetration of the crime was impounded. Eduardo Herbias was later identified in a police lineup by Amparo Labrador and Julie Capillo as the driver of the motorcycle.

On 16 November 1992 Eduardo Herbias y Sellote alias "*Eddie*" together with a certain "*John Doe*" was charged with murder^[2] and frustrated murder^[3] before the Regional Trial Court of Valenzuela, Metro Manila. On 28 September 1993 the trial court found the accused Herbias "guilty beyond reasonable doubt of the crime of Murder in Crim. Case No. 1927-V-92 and hereby sentences him to suffer the penalty of reclusion temporal in its maximum period to reclusion perpetua and to indemnify the heirs of the victim Jeremias Saladio the amount of P50,000.00 x x x x" The court likewise found the same accused "guilty beyond reasonable doubt of the crime of frustrated murder and hereby sentences him to suffer the penalty of reclusion

temporal in its maximum period."^[4]

Appellant Herbias now seeks the reversal of his conviction and claims that the testimonies of the prosecution witnesses are full of inconsistencies and contrary to human experience hence unworthy of credence and belief.

Jurisprudence is settled that findings of fact of the trial court command great weight and respect unless patent inconsistencies are ignored or where the conclusions reached are clearly unsupported by evidence.^[5] But these exceptions are unavailing. The imputed inconsistencies in the testimonies of the prosecution witnesses refer only to minor details which reinforce, rather than weaken, their credibility as they erase any suspicion of a rehearsed testimony. In *People v. Ramos*^[6] we ruled that the witnesses testifying on the same event do not have to be consistent in every detail as differences in recollection, viewpoint or impressions are inevitable. Total recall or perfect harmony is not required. As long as the witnesses concur on material points, slight differences in details do not reflect on the essential veracity of their testimonies.

Neither do we subscribe to appellant's supposition that inconsistencies between the sworn statements of the witnesses executed before the police authorities and their testimonies in court are an indicium that they were lying. Such inconsistencies, if indeed they are, do not necessarily destroy their credibility. Sworn statements are often taken right after the harrowing event such that the witness has not yet regained sufficient composure to accurately recall every detail of the incident. The affidavits executed before the police authorities cannot be expected to contain all the details of the occurrence. Testimonies given in open court carry more weight, especially when the witness was made to withstand a protracted and grueling cross-examination.

Appellant postulates that it was not physically possible for Jeremias to plunge himself at the driver of the motorcycle after being wounded taking into consideration the testimony of the NBI Medico-Legal Officer that the gunshot wounds on the head sustained by the victim were instantaneously fatal. The argument is baseless. No determination was made as to which of the five (5) gunshot wounds was first inflicted. There was no conclusive evidence to show that the first bullet which hit the victim immediately caused his death. Of the five (5) wounds, two (2) were considered fatal. We can only surmise at this point that the first bullet which hit the victim did not instantaneously cause his death thereby enabling him to run towards accused-appellant.

Accused-appellant likewise underscores the fact that there was no police lineup and that he was picked up without the benefit of a warrant of arrest. For sure there is no law requiring a police lineup before a suspect can be identified as the culprit. The fact that Amparo and Julie pointed to appellant Herbias as the one driving the motorcycle and who passed on his gun to his back rider after the latter had exhausted his bullets is more than sufficient identification. Besides, it is too late for appellant to question any irregularity in his arrest. He is deemed to have abandoned this right the moment he submitted himself upon arraignment to the jurisdiction of the court. As we held in *People v. Lozano*^[7] -

Accused-appellant Lozano's allegation in his first assigned error that the trial court did not acquire jurisdiction in trying his case and that decision rendered by him (sic) should be declared null and void, does not merit any consideration.

The record shows that the issue of jurisdiction in the trial court was not raised by the accused-appellant Lozano, so much so that if the issue be raised at this point in time it would be useless and futile because the question of jurisdiction over the person which was not raised in the trial court cannot be raised on appeal. (*Vda. De Alberto v. Court of Appeals*, 173 SCRA 436 [1989]).

Besides, a party is estopped from assailing the jurisdiction of a court a quo after voluntarily submitting himself to its jurisdiction. (*Tejones v. Geronella*, 159 SCRA 100 [1988]). Accused-appellant Lozano's appearance in the arraignment and pleading not guilty to the crime charged, is a sign that he voluntarily submitted himself to the jurisdiction of the court, so that jurisdiction has been acquired by the court over his person and continues until the termination of his case.

Lastly, appellant asserverates that the court below misapplied the doctrine that alibi is of no moment in the face of positive identification, taking into account the failure of the prosecution to discharge its burden of proving his guilt beyond reasonable doubt. On the contrary, we find that the prosecution has proved his guilt beyond cavil. His identification by the two (2) prosecution witnesses was never in doubt. Amparo Labrador and Julie Capillo had no reason to lie nor to falsely testify against Herbias. Hence, the defense of alibi crumbled under the sheer weight of the witnesses' positive identification of the accused.

Conspiracy to kill Jeremias Saladio was adequately established. There was unity of design and purpose as shown by the fact that appellant gave his gun to the other assailant when the latter ran out of bullets. After the execution of their criminal act they left the crime scene together. Consequently, although it was not appellant who actually shot the victim, he and his cohort are equally liable for the crime. When there is conspiracy the act of one is the act of all.

Alevosia was properly appreciated by the lower court. The means and methods employed in the cold-blooded killing tended directly and especially to insure its execution without risk from the defense which the victim might have made. Assailants deliberately chose the spot near the gate of Meyer Steel Pipe Corporation to ensure the murder of their quarry as the vehicles passing thereby usually slowed down due to the vicious potholes on the road. However, the aggravating circumstance of abuse of superior strength is deemed absorbed in treachery.^[8]

The evidence on the existence of evident premeditation does not appear conclusive as it can only be presumed where conspiracy is directly established. But when conspiracy is only implied, as in this case, evident premeditation may not be appreciated if there is no showing as to when the plan to kill the victim was hatched or how much time elapsed before it was carried out.^[9] In the present case, conspiracy was not directly established. It may only be inferred from the manner by which the two (2) malefactors executed their sinister design. No evidence was presented to show how appellant and his cohort planned and prepared to slay their