

## PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. GIOVANNI BAJAR Y CABOG, ACCUSED-APPELLANT.

*G.R. No. 118240. October 28, 1997*

Ponente: VITUG, J.

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### VITUG, J.:

Giovanni Bajar y Cabog was found guilty by the Regional Trial Court of Manila, Branch 12, of the crime of robbery with homicide in Criminal Case No. 90-87734 and meted the penalty of reclusion perpetua. Bajar was also ordered to pay the amount of P20,700.00 allegedly taken from the deceased victim, Ramon Mallari, plus civil indemnity of P50,000.00, to the latter's heirs. Bajar's conviction for that crime arose from an information that read:

“That on or about September 11, 1990, in the City of Manila, Philippines, the said accused, conspiring and confederating together with three other persons, whose true names, identities and present whereabouts are still unknown, and helping one another, all armed with firearms and bladed weapons, and therefore in band, while in front of the Pritil Market along Juan Luna St., Tondo, Manila, a street used by persons or vehicles for the movement or circulation of persons or transportation of goods, articles or property, or both, with intent to gain and by means of force, violence against and intimidation of person, that is, by shooting one RAMON MALLARI Y DELA CRUZ several times with their said firearms, hitting him on his head and other vital parts of his body, and shouting ‘Walang makikialam. Holdup ito,’ did then and there wilfully, unlawfully, and feloniously take, rob, and carry away the sum of P20,200.00, Philippine currency, in cash, of said Ramon Mallari y dela Cruz against his will, to the damage and prejudice of the latter, in the same sum as aforesaid; that by reason and on the occasion of the said robbery, the said Ramon Mallari y dela Cruz, sustained mortal gunshot wounds, which were the direct cause of his death immediately thereafter.

"SO ORDERED."[1]

The accused pleaded not guilty to the charge.[2] During the trial, the prosecution moved for an amendment of the information to conform to the evidence, i.e., that the amount taken from the victim was P20,700.00 and not P20,200.00 as so initially alleged.

Twenty five-year old[3] Ramon Mallari helped in tending the family's grocery store at the Pritil market in Tondo, Manila. Lucia Mallari, Ramon's mother, remembered having taken into her employ Bajar, the accused, as a store helper. Her son, Ramon, would repair to the store every afternoon and there stay until early evening when the two would return home with the store's earnings for the day. On 11 September 1990, when the store was just about ready to close, the proceeds of sale had reached P18,500.00.[4]

Melchor Santos, a "sidecar" driver, was standing near a Ford Fierra and attending to his passenger's pieces of baggage when he heard a gunshot. He did not see at that instant where the gunfire originated from but he could see that Ramon Mallari was evidently the victim of the gunshot. The latter, with a bloodied head and body, crawled under the Ford Fierra. Then, Santos saw the gunman. The latter approached and pulled the victim from under the vehicle. The gunman fired two more shots on the now cowering victim. The assailant, after staring

momentarily at Santos, walked away towards Dandan to the direction of the Tondo Church. Santos, prodded by his passenger, hurriedly drove his "sidecar" away from the scene. Santos later went to the homicide section of the Western Police District to give a statement.[5] He identified Bajar to be the person who shot Mallari from among the eight persons who were lined up at the police station.[6] The assailant was not unfamiliar to Santos. He would see the man about three times or so a week around the Pritil market.

Meanwhile, Mallari was rushed to the Moriones Hospital; he did not make it.[7] He sustained three gunshot wounds – one on the left side of his forehead, another on the lower portion of the neck and the third on the “chest backside” towards his left.[8] The latter wound was the most fatal since it affected a vital organ, the left lung.[9] His body was brought to the Veronica Memorial Chapel in Pasay City where it was photographed,[10] identified by his sister Lydia, and later autopsied by Dr. Roberto Garcia.[11]

Aside from the missing sales proceeds of P18,500.00 for the day, the deceased victim also lost his wallet containing P1,000.00 and his wedding ring worth P1,200.00.[12]

Bajar interposed denial and alibi in his defense. A native of Masbate, Bajar went to Manila to seek employment. He first found it in the Mallari Grocery at the Pritil market in Tondo, Manila. Lucia Mallari, the victim’s mother, readily took him in her employ. He worked at the grocery shop from 1987 until some time in 1988 when he went home to Masbate for a vacation. In June 1990, appellant returned to Manila. Failing to get himself re-employed at the Mallari Grocery, he sought and found another job, as a "live-in" employee, at the Ricardo Pateña Rice Supply in Maypajo Market, Caloocan City, starting July 1990 until 01 October 1990. On that particular day of 01 October 1990, he was supposed to leave for Masbate with an aunt but he missed the ship. He then applied for employment with, and was hired by, the Melaño Grocery and Rice Supply. Just before lunchtime on 03 October 1990, four men unexpectedly came to arrest him at Melaño's store.[13]

Bajar's story was corroborated, in part, by his previous employer, Ricardo Pateña, who said that Bajar was Pateña's helper from 1987 to October 1990. On 11 September 1990, Pateña left his residence with Bajar and two other employees at around 6:15 a.m., arriving at the store about fifteen minutes later. Nobody left the store until about 8:30 in the evening when they drove back to the residence.[14]

Parenthetically, the complete records of the case, left undecided by the presiding judge of Branch 12, Regional Trial Court of Manila, were forwarded, on 09 March 1994, by Judge Rosmari D. Carandang to the Judiciary Planning Development and Implementation Office (JPDIO).[15] Pursuant to Administrative Order No.68-92, Judge Willelmo C. Fortun was designated to assist in the disposition of the “inherited case.”[16]

In his appeal from the judgment convicting him, Bajar, through the Public Attorney’s Office, contended that -

“I

"THE TRIAL COURT ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF ROBBERY WITH HOMICIDE DESPITE LACK OF POSITIVE IDENTIFICATION BY THE LONE WITNESS FOR THE PROSECUTION.

"II

"THE TRIAL COURT ERRED IN ORDERING THE ACCUSED-APPELLANT TO PAY THE HEIRS OF RAMON MALLARI THE AMOUNT OF P20,700.00 AS ACTUAL DAMAGES AND P50,000.00 AS DEATH INDEMNITY.”[17]

The Court has carefully gone over the records and finds no plausible reason or justification to overturn the judgment of the trial court. It must, therefore, reject appellant's plea for a reversal of his conviction.

The positive identification of appellant as the gunwielder who had delivered the fatal shots that killed the victim was not convincingly assailed. Santos, an eyewitness, testified:

"DIRECT EXAMINATION BY FISCAL PAZZIUAGAN:

"Q Mr. Santos, on September 11, 1990 at around 7:30 in the evening do you remember where were you?

"WITNESS

"A I was in front of my side car when I heard a gunshot, sir.

"Q Now, where were you specifically situated, what area?

"A At Juan Luna St., Tondo, Manila, sir.

"Q What were you doing at that time?

"A I was then taking passenger's baggages (sic) to my side car, sir.

"Q After hearing a gunshot, what did you do if you did anything?

"A I went near my side car and the people there thought that was someone, a sidecar boy who was killed, sir.

"PROSECUTOR

"Q When you heard that gunshot, Mr. Witness, do you know where it come (sic) from?

"WITNESS

"A At the very front where I was standing then, sir.

"Q And how far were you from that place where you heard the gunshot?

"A The place where I was standing was near the Ford Fierra, with the distance of 2 meters away from me, sir.

"Q Do you know who fired that shot?

"ATTY. ALISUAG

He will be incompetent.

"COURT

If he knows let him answer.

"WITNESS

"A I don't know who fired the gun but I just heard a gunshot, sir.

"Q And do you know who was he shooting at?

"A All I saw is that Ramon Mallari was shot and he crawled under the Ford Fierra and was pulled out and was shot again, sir.

"Q How many times was Ramon Mallari was shot (sic) ?

"A I just heard three gunshot, sir.

"Q And do you know how many person shot Ramon Mallari?

"A I don't know, sir.

"Q This Ramon Mallari, do you know him?

"A I know him sir, he was being called Ramon Mallari.

"Q Why do you know him Mr. Witness?

"ATTY. ALISUAG

That would be misleading, Your Honor.

"COURT

Reform your question.

"PROSECUTOR

"Q How did you know that he was Ramon?

"A I came to know him when he was pulled out under the Ford Fierra, sir.

"PROSECUTOR

"Q When you saw the victim being shot and pulled from the Ford Fierra where was the person who shot Ramon facing at the time in relation to your place now?

"WITNESS

"A He was facing Ramon Mallari, sir.

"Q In relation to you where was he at the time?

"A Assuming the Ford Fierra is in front of me, the person who shot the victim was facing beside the Ford Fierra, sir.

"Q And your position is there?

"A I was beside the Ford Fierra, obliquely facing the assailant - - at the rear end of the Ford Fierra, sir.

"Q The question is where is the person who shot Ramon facing at the time in relation to your place now?

"A I was standing near the rear end of the Ford Fierra facing the sidecar and when I heard the gunshots I turned my back to my left and facing the Ford Fierra, sir (sic).

"Q Now, Mr. Melchor Santos, for example the sidecar is here where were you?

"INTERPRETER

The witness described the scene by showing that the Ford Fierra was parked sidewise while his sidecar was parked in such a way that its rear portion is facing the right side of the parked Ford Fierra. Then he pointed to the rear portion of his sidecar as the place where he was standing such that he was facing the rear portion of his sidecar while the assailant was facing the right side of the Ford Fierra when he shot Ramon after he pulled him under the Ford Fierra then when he stated when he heard (sic) the shot the witness turned around to his left and he saw the assailant pulled out (sic) the victim, Ramon Mallari, then he shot him again (sic).

"PROSECUTOR

"Q Now, what happened after you saw Ramon Mallari being shot again after he was pulled by the assailant?

"WITNESS

"A The person who shot the victim walked towards (sic) Dandan proceeding Tondo, towards the direction of Tondo Church, sir.

"PROSECUTOR

"Q Based on where you were standing, to what direction did the assailant go, was it towards the place where you were standing or away to (sic) where you were standing?

"WITNESS

"A Away from me, but before he passed by me we had the chance of staring at each other, sir.

"Q Now Mr. Witness, was it the first time that you saw that person who shot the victim?

"ATTY. ALISUAG

No basis, Your Honor.

"COURT

Reform you question, Fiscal.

"PROSECUTOR

"Q Aside from that time when you saw that assailant when you were stared at him when was the first time that you saw him, aside from that time when you were staring at him?

"WITNESS

"A After we have stared at each other, we did not meet again, sir.

"ATTY. ALISUAG

Considering that the answer is not responsive, Your Honor, may we request that that answer.

"PROSECUTOR

"Q You said that you stared at that assailant during the shooting incident, is that correct?

"WITNESS

"A I first saw him when he was roaming along Torres Tondo, Manila.

"Q And how often do you see him at Torrest St. (sic), before that incident?

"A Sometimes three times a week, sir.

"x x x x x x x x.

"Q Is the person who shot now, if he happened to be inside the courtroom will you be able to identify?

"A Yes sir.

"Q Will you please point to him?

"INTERPRETER

Witness pointed to a person who gave the name GIOVANNI BAJAR when asked."[18]

During a startling event, the natural tendency of witnesses would be to strive to look at the appearance of the perpetrator of the crime and to observe the manner of its perpetration.[19] Eyewitness Santos was barely two meters away from the shooting and his vision remained focus on the incident. The momentary power outage did not prevent him from seeing what was taking place. He explained:

"Q At that time that you saw the incident, what was the condition of the area, was it dark or lighted?

"ATTY. ALISUAG

Your Honor, the defense

"Q (sic) At first it was lighted then later on the light were went of (sic).

"PROSECUTOR

"Q When did the light go off, Mr. Witness, was it after the victim was shot, will you please tell us?

"A On the second gunshot the light went off, sir.

"Q After the second gunshot – how about when you stared at the assailant was the light still on?

"ATTY. ALISUAG

Leading.

"PROSECUTOR

Alternative.

"COURT

Alternative, let the witness answer.

"A When we stared at each other there was a light coming in the nearby store using a gas lamp, and very soon the light went on, sir." [20]

Illumination by a gas lamp could be sufficient for purposes of identification of the malefactor.[21] In any event, the electric power was cut-off only for a moment and restored almost instantly, even before the third gunshot was delivered.

The fact that the prosecution has presented only one eyewitness to the crime is of little consequence. The testimony of a single witness, when credible and trustworthy, could be sufficient to convict.[22] Significantly, appellant has not imputed any ulterior motive why Santos, a stranger, would testify against him.[23]

The positive identification made by an eyewitness of the culprit effectively effaced the claim of alibi.[24] Additionally, this defense failed to establish the physical impossibility of appellant being at the crime scene when it transpired, an essential element for the defense of alibi to prosper.[25]

Appellant argues that if, indeed, he has committed the crime, then he would have fled and sought employment elsewhere to avoid the clutches of the law.[26] Non-flight, however, is not always an indication of innocence. In *People vs. Lamsing*, [27] the Court has said:

"Appellant also argues that his arrest in a place near the scene of the crime negates his guilt. He contends that since flight is evidence of guilt and of a guilty conscience, then conversely non-flight is an indication of innocence. The argument is untenable. If the contention is correct then all that a criminal must do to profess his innocence would be to remain at or near the place of the crime and declare, when arrested, that he is innocent otherwise he would have fled. The crime may have been committed with impunity and he may have thought that the victim or his heirs would not complain, or that the eyewitness will not be able to identify him." [28]

The crime charged against appellant is robbery with homicide, the elements of which, under Article 294, paragraph 1, in relation to Article 293, of the Revised Penal Code, [29] are: (a) intent to gain, (b) unlawful taking of personal property belonging to another and (c) violence against or intimidation of any person by reason of which, or on occasion thereof, the crime of homicide shall have been committed. In robbery with homicide, it is essential, however, that there should be a direct relation or an intimate connection between robbery and the killing whether the latter be prior or subsequent to the former or whether or not both crimes are committed at the same time. [30]

Santos, in his testimony, failed to mention the robbery angle. In fact, in his sworn statement, [31] he stated

categorically that he did not know whether the assailants had taken anything from the victim (“Hindi ko po alam kung may kinuha po.”) The other alleged eyewitness, Edgardo Celso y Hubilla, whose sworn statement[32] was taken by the police on 13 September 1990, did not swear that the victim was actually robbed. The only hint to indicate robbery was Celso’s statement that one of the culprits had been heard to say that they were conducting a “hold-up;” thus:

“10. T: Maari bang ikuwento mo sa amin kung ano yong nasaksihan mong pangyayari?

"S: Ganito po iyon, habang hinihintay ko si Pareng Efren para kunin sa kanya ang pedicab na ibebeyahe ko napansin na may dalawang lalaki na parang nag-aaway sa tabi ng Ford Fiera maya maya nakita ko ko (sic) yong isang lalaki, tapos nakita ko bumagsak yong lalaki at napunta sa ilalim ng Ford Fiera, tapos nakita yong isa pang lalaki na may dalang baril na nagsabi ng `WALANG MAKIKIALAM HOLD-UP ITO' tapos nakita ko yong lalaking bumaril doon sa anak ni Mallari na hinihila yong anak ni Mallari na nabaril tapos nakita ko na muling binaril nong lalaki ang anak ni Mallari, tapos nakita ko may may (sic) tatlong lalaki na tumakbo na may mga dalang baril at ang isa ay may da (sic) dalang balisong na tumakbo papuntang Pritil Detachment. Tapos nakita ko yong lalaki bumaril sa anak ni Mallari na tumakbo na papuntang Divisoria. Ang ginawa namin mga sidecar boys ay nilapitan (sic) namin yong lalaking nabaril at isinakay namin sa jeep tapos dinala namin sa hospital.”[33]

Unfortunately, the prosecution failed to present Celso at the witness stand. Absent any evidence that appellant indeed robbed the victim, the special complex crime of robbery with homicide would not stand. The fact that the Mallari family lost some amount of cash or valuables did not necessarily establish, let alone beyond reasonable doubt, that it was appellant's doing.

Given all the evidence, the only crime proven is one of homicide under Article 249 of the Revised Penal Code that imposes the penalty of reclusion temporal. In the absence of any mitigating or aggravating circumstance, appellant should be meted the medium period of the penalty.[34] Applying the Indeterminate Sentence Law, there being no reasons shown for its inapplicability, that penalty can be anywhere within the range of prision mayor, as minimum, to the medium period of reclusion temporal, as maximum. Pursuant to prevailing jurisprudence, appellant must indemnify the heirs of the victim in the amount of P50,000.00.

WHEREFORE, the Court MODIFIES the appealed judgment of the trial court by now holding that appellant Giovanni Bajar y Cabog is guilty of the crime of homicide for the killing of Ramon Mallari, for which crime he shall suffer the indeterminate penalty of nine (9) years of the medium period of prision mayor, as minimum, to fifteen (15) years and four (4) months of the medium period of reclusion temporal, as maximum, and ordered to indemnify the heirs of Ramon Mallari in the amount of P50,000.00. Costs against appellant.  
SO ORDERED.

Davide, Jr., Bellosillo, and Kapunan, JJ., concur.

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[1] Records, p. 1.

[2] Records, p. 5.

[3] Exh. N, Records, p. 111.

[4] TSN, 04 June 1991, pp. 3-4.

[5] TSN, 21 May 1991, pp. 7-8.

[6] TSN, 17 September 1991, p. 15; 30 October 1991, p. 2.

[7] Melchor Santos, TSN, 21 May 1991, p. 7.

[8] Dr. Roberto Garcia, TSN, 25 June 1991, p. 11.

[9] Ibid., p. 12; Exh. N, Records, p. 111.

[10] Exhs. K, L & M, Records, pp. 108A-108C.

[11] Dr. Roberto Garcia, 25 June 1991, p. 6.

[12] Lucia Mallari, TSN, 04 June 1991, p. 7.

[13] TSN, 31 July 1991, pp. 3-11.

[14] TSN, 10 July 1991, pp. 2-5.

[15] Records, p. 114.

[16] Decision, p. 1. Administrative Order No. 68-92 dated 16 March 1992 designated Judge Willelmo C. Fortun as assisting judge for the Regional Trial Court in the National Capital Judicial Region. Such designation is in accordance with Memorandum Circular No. 1-89 issued on 13 June 1989 by then Chief Justice Marcelo B. Fernan which defines an “inherited case” as “one tried and finished by an RTC Judge but left undecided and is now listed as pending decision before the incumbent Judge.”

[17] Rollo, p. 39.

[18] TSN, 21 May 1991, pp. 3-9.

[19] People vs. Mendoza, 254 SCRA 61.

[20] TSN, 21 May 1991, pp. 6-7.

[21] People vs. Aboga, 147 SCRA 404.

[22] People vs. Alcartado, 261 SCRA 291, citing People vs. Hangad, 227 SCRA 244.

[23] TSN, 30 October 1991, p. 2.

[24] People vs. Tazo, 260 SCRA 816.

[25] People vs. Caguioa, Sr., 259 SCRA 403.

[26] Appellant’s Brief, p. 11.

**[27] 248 SCRA 471.**

[28] At p. 478.

[29] People vs. Pacapac, 248 SCRA 77. Art. 293 provides that “(a)ny person who, with intent to gain, shall take any personal property belonging to another, by means of violence against or intimidation of any person, or using force upon anything, shall be guilty of robbery.”

[30] Ibid., citing People vs. Hernandez, 46 Phil. 48 (1924).

[31] Exhibit A, Records, p. 99.

[32] Exh. F, Records, p. 105.

[33] Records, p. 105.

[34] Art. 64(1), Revised Penal Code.

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