

THIRD DIVISION

[G.R. NO. 150723, July 11, 2006]

**RAMONITO MANABAN, PETITIONER, VS. COURT OF APPEALS
AND THE PEOPLE OF THE PHILIPPINES, RESPONDENTS.**

DECISION

CARPIO, J.:

The Case

This is a petition for review^[1] of the Decision^[2] dated 21 May 2001 and the Resolution^[3] dated 8 November 2001 of the Court of Appeals in CA-G.R. CR No. 23790. In its 21 May 2001 Decision, the Court of Appeals affirmed the Decision of the Regional Trial Court of Quezon City, Branch 219 ("trial court"), finding Ramonito Manaban ("Manaban") guilty of the crime of homicide. In its 8 November 2001 Resolution, the Court of Appeals modified its Decision by reducing the award for loss of earning capacity.

The Facts

The facts as narrated by the trial court are as follows:

On October 11, 1996, at around 1:25 o'clock in the morning, Joselito Bautista, a father and a member of the UP Police Force, took his daughter, Frinzi, who complained of difficulty in breathing, to the UP Health Center. There, the doctors prescribed certain medicines to be purchased. Needing money therefore, Joselito Bautista, who had taken alcoholic drinks earlier, proceeded to the BPI Kalayaan Branch to withdraw some money from its Automated Teller Machine (ATM).

Upon arrival at the bank, Bautista proceeded to the ATM booth but because he could not effectively withdraw money, he started kicking and pounding on the machine. For said reason, the bank security guard, Ramonito Manaban, approached and asked him what the problem was. Bautista complained that his ATM was retrieved by the machine and that no money came out of it. After Manaban had checked the receipt, he informed Bautista that the Personal Identification Number (PIN) entered was wrong and advised him to just return the next morning. This angered Bautista all the more and resumed pounding on the machine. Manaban then urged him to calm down and referred him to their customer service over the phone. Still not mollified, Bautista continued raging and striking the machine. When Manaban could no longer pacify him, he fired a warning shot. That diverted the attention of Bautista. Instead of venting his ire against the machine, he confronted Manaban. After some exchange of words, a shot rang out fatally hitting Bautista.^[4]

On 24 October 1996, Manaban was charged with the crime of murder. The Information states:

That on or about the 11th day of October 1996, in Quezon City, Philippines, the above-named accused, armed with a gun, and with intent to kill, qualified by treachery, did then and there wilfully, unlawfully and feloniously attack, assault and employ personal violence upon the person of one JOSELITO BAUTISTA, by then and there, shooting him at the back portion of his body, thereby inflicting upon said JOSELITO BAUTISTA mortal wounds which were the direct and immediate cause of his untimely death, to the damage and prejudice of the heirs of the said JOSELITO BAUTISTA.^[5]

When arraigned on 4 December 1996,^[6] Manaban pleaded not guilty to the offense charged. Trial then followed.

The Trial

The Prosecution's Version

The prosecution presented six witnesses: (1) Faustino Delariarte ("Delariarte"); (2) SPO1 Dominador Salvador ("SPO1 Salvador"); (3) Rodolfo Bilgera ("Bilgera"); (4) Celedonia H. Tan ("Tan"); (5) Dr. Eduardo T. Vargas ("Dr. Vargas"); and (6) Editha Bautista ("Editha").

Delariarte was a security guard who was employed by the same security agency as Manaban. Delariarte testified that in the early morning of 11 October 1996, their duty officer, Diosdado Morga, called him and informed him that one of the guards stationed at the BPI Kalayaan Branch ("BPI Kalayaan") was involved in a shooting incident. When he arrived at the bank, Delariarte saw Manaban inside the bank using the phone. He also saw Joselito Bautista ("Bautista") lying on the ground but still alive. He then told their company driver, Virgilio Cancisio ("Cancisio"), to take Bautista to the hospital but to be careful since there was a gun tucked in Bautista's waist. Bautista allegedly reeked of alcohol. Delariarte further testified that when Manaban came out of the bank, Manaban admitted to Delariarte that he shot Bautista.^[7]

SPO1 Salvador was a police investigator assigned at Station 10, Philippine National Police-Central Police District Command (PNP-CPDC) of Quezon City. SPO1 Salvador testified that on 11 October 1996, about 2:05 a.m., the duty desk officer SPO2 Redemption Negre sent him, SPO1 Jerry Abad and SPO1 Ruben Reyes to BPI Kalayaan to investigate an alleged shooting incident. SPO1 Salvador testified that when they arrived at BPI Kalayaan, they were met by Delariarte and Cancisio. Manaban then approached them and surrendered his service firearm, a .38 caliber revolver, to SPO1 Salvador. Manaban allegedly admitted shooting Bautista. SPO1 Salvador and his team investigated the crime scene. According to SPO1 Salvador, he saw Bautista lying on his back near the Automated Teller Machine ("ATM"). A .38 caliber revolver inside a locked holster was tucked in Bautista's right waist. SPO1 Salvador noticed that Bautista, who was still breathing, had been shot in the back. They brought Bautista to the East Avenue Medical Center where Bautista later died. Thereafter, they proceeded to the police station and turned over Manaban to their desk officer for proper disposition and investigation.^[8]

Dr. Vargas, National Bureau of Investigation (NBI) Medico-Legal Officer, conducted an autopsy on Bautista's cadaver. Dr. Vargas testified that Bautista died of a gunshot wound. According to him, the point of entry of the bullet was at the back, on the right side of the body and there was no exit point. He stated that he was able to recover the slug from the left anterior portion of the victim's body and that he later submitted the slug to the NBI Ballistics Division. Dr. Vargas further stated that the bullet wound was fatal because the bullet hit the right lung and lacerated parts of the liver, stomach and the pancreas. Based on the location of the gunshot wound, Dr. Vargas deduced that the assailant must have been behind the victim, on the right side, when he shot the victim.^[9] Dr. Vargas also testified that the absence of signs of near-fire indicates that the distance between the muzzle of the gun and the point of entry was more than 24 inches. During cross-examination, Dr. Vargas testified that he was able to take blood samples from the victim which, based on the NBI Chemistry Division analysis, tested positive for alcohol.^[10] Dr. Vargas issued a certificate of post-mortem examination^[11] and an autopsy report.^[12]

Bilgera was a ballisticsian at the Firearms Investigation Division (FID) of the NBI. Bilgera testified that upon receiving a letter-request dated 11 October 1996 from PNP Police Inspector Percival Fontanilla, he conducted a ballistic examination on the following specimens submitted to him:

1. One (1) ARMSCOR 2015, Caliber .38 Revolver, SN-28909 marked "DBS";
2. One (1) ARMSCOR 200, Caliber .38 Revolver, SN-P03471 marked "DBS";
3. One (1) Caliber .38 one badly deformed copper coated lead bullet marked "RM";
4. Two (2) Caliber .38 empty shells marked "RM-1" and "RM-2";
5. One (1) Caliber .38 misfired ammunition marked "RM-3";
6. Nine (9) Caliber .38 ammunition marked "RM-4", "RM-5", "RM-6" and "JB-1" to "JB-6"; and
7. One (1) Caliber .38 deformed copper coated lead bullet marked "JB". (Re-FID No. 606-14-1096 [N-96-2047]).^[13]

Based on the examination, Bilgera concluded that the bullet which was extracted from Bautista's body by the medico-legal officer was fired from the ARMSCOR 2015 .38 Caliber revolver with Serial No. 28909^[14] and that the empty shells also came from the same gun. Bilgera submitted a written report^[15] on the result of his examination.

Editha, the widow of Joselito Bautista, testified that she was married to Bautista on 22 December 1993 in civil rites and that they have four children, the eldest of whom was 13 years old. Editha stated that her husband, who was a member of the University of the Philippines Police Force ("UP Police Force") since 1985, was receiving a monthly salary of P5,050 at the time of his death. She narrated that on 11 October 1996, about 1:25 a.m., her husband brought their daughter Frinzi who

had an asthma attack to the UP Health Center where she was confined for three days. According to Editha, her husband then left to withdraw money at BPI Kalayaan for the purchase of medicines. Later, she was fetched by members of the UP Police Force who informed her that her husband had been shot. Editha claimed that as a consequence of her husband's death, she spent more than P111,000^[16] for the nine-day wake, embalmment and funeral services.^[17]

The prosecution and the defense agreed to dispense with the testimony of Tan, the Assistant Manager of BPI Kalayaan. Instead, they just agreed to stipulate that on 11 October 1996, about 7:45 a.m., Tan and BPI Custodian Elma R. Piñano retrieved BPI Express Teller Card No. 3085-2616-21 issued to Bautista which was captured by the ATM because a wrong Personal Identification Number (PIN) was entered.^[18]

The Defense's Version

The defense presented four witnesses: (1) Manaban; (2) Renz Javelona ("Javelona"); (3) Tan; and (4) Patrick Peralta ("Peralta").

Manaban, the accused, testified that he was employed by Eagle Star Security Agency as a security guard and was assigned at BPI Kalayaan. On 10 October 1996, he was on duty from 7:00 p.m. until 7:00 a.m. the following day.

Manaban narrated that on 11 October 1996, about 1:40 a.m., Bautista tried to withdraw money from the ATM. Manaban then saw Bautista pounding and kicking the ATM. When Manaban asked Bautista what was the problem, Bautista replied that no money came out from the machine. According to Manaban, Bautista appeared to be intoxicated.

Manaban looked at the receipt issued to Bautista and saw that the receipt indicated that a wrong PIN was entered. Manaban informed Bautista that the ATM captured Bautista's ATM card because he entered the wrong PIN. He then advised Bautista to return the following day when the staff in charge of servicing the ATM would be around.

Bautista replied that he needed the money very badly and then resumed pounding on the ATM. Manaban tried to stop Bautista and called by telephone the ATM service personnel to pacify Bautista. Bautista talked to the ATM service personnel and Manaban heard him shouting invectives and saw him pounding and kicking the ATM again.

When Manaban failed to pacify Bautista, Manaban fired a warning shot in the air. Bautista then faced him and told him not to block his way because he needed the money very badly. Bautista allegedly raised his shirt and showed his gun which was tucked in his waist. Manaban stepped back and told Bautista not to draw his gun, otherwise he would shoot.

However, Bautista allegedly kept on moving toward Manaban, who again warned Bautista not to come near him or he would be forced to shoot him. Bautista suddenly turned his back and was allegedly about to draw his gun. Fearing that he would be shot first, Manaban pulled the trigger and shot Bautista.

Manaban recounted that he then went inside the bank and called the police and his agency to report the incident. While he was inside the bank, a fellow security guard arrived and asked what happened. Manaban answered, "*wala yan, lasing.*"

Later, a mobile patrol car arrived. Manaban related the incident to the police officer and informed him that Bautista was still alive and had a gun. Manaban then surrendered his service firearm to the police officer. According to Manaban, he fired his gun twice – once in the air as a warning shot and the second time at Bautista who was about four meters from him.^[19]

On cross-examination, Manaban further explained that after he fired the warning shot, Bautista kept coming toward him. Manaban pointed his gun at Bautista and warned him not to come closer. When Bautista turned his back, Manaban thought Bautista was about to draw his gun when he placed his right hand on his waist. Fearing for his life, he pulled the trigger and shot Manaban. According to Manaban, "*[n]oong makita ko siya na pabalikwas siya, na sadya bubunot ng baril, sa takot ko na baka maunahan niya ako at mapatay, doon ko na rin nakalabit yung gatilyo ng baril.*" Manaban declared that it did not occur to him to simply disable the victim for fear that Bautista would shoot him first.^[20]

Javelona was an ATM Service Assistant of BPI. Javelona testified that on 11 October 1996, between 1:30 a.m. and 2:00 a.m., she received a call from a client at BPI Kalayaan. The client, who was later identified as Bautista, complained: "*Nagwi-withdraw ako dito sa ATM Kalayaan. Mali daw yung PIN ko, alam ko tama yung PIN ko. Ilang beses ko nang ginamit, mali pa rin. Kailangan kong mag-withdraw.*"

Javelona tried to placate Bautista and advised him not to insert his card anymore because it might be captured by the machine and to try again later in the morning. Bautista allegedly answered angrily: "*Na capture na nga, eh! Tama na nga yung PIN number [sic]. Hindi ako pwedeng hindi makakuha ng pera. Kailangan kong bumili ng gamot para sa anak ko. Hindi ko naman kasalanan ito.*" Javelona replied: "*Sir, hindi ho natin makukuha ang card ninyo ngayon kasi ang makaka-open lang ho ng ATM machine ay ang officer ng Kalayaan Branch. Even if makuha natin ang card ninyo ngayon, hindi pa ninyo magagamit ngayon. Magagamit lang ninyo as soon as mag-pa-encode kayo ng PIN number [sic].*"

Bautista then reiterated angrily his dire need to withdraw money for the medicine of his daughter. Javelona apologized to Bautista and informed him that there was really nothing she could do at that time. She also advised Bautista to go back to the bank at 9:00 a.m. to get his ATM card and also to withdraw money over the counter. Bautista refused to be pacified and started cursing so Javelona decided to hang up the phone.^[21]

Tan, the Assistant Manager of BPI Kalayaan, testified that when she reported for work in the morning of 11 October 1996, she discovered that the ATM was out of order. According to Tan, the ATM keyboard was not properly mounted and the keys were damaged. Also, the telephone beside the ATM was hung up. Tan then called Peralta, the technician, to have the ATM repaired. When Peralta opened the ATM, they found Bautista's ATM card which was captured by the machine.^[22]

Peralta, a Customer Engineer Specialist, testified that on 11 October 1996, BPI