

## FIRST DIVISION

[ CA-G.R. CR-H.C. NO. 00950, August 08, 2006 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
MICHAEL ORTAL Y MENDEZ & LOUIE DIZON Y COMMENDADOR,  
ACCUSED-APPELLANTS.**

### D E C I S I O N

**DE GUIA-SALVADOR, J.:**

This is an appeal from the May 21, 2003 Judgment<sup>[1]</sup> of the Regional Trial Court of Pasig City, Branch 166, convicting accused-appellants Michael Ortal y Mendez and Louie Dizon y Comendador, (or "**appellants**") of the crime of robbery with homicide in Criminal Case No. 123179-H and robbery (hold-up) in Criminal Case No. 123180-H.

The Information charging appellants with robbery with homicide reads:

"On or about May 12, 2002, in Pasig City and within the jurisdiction of this Honorable Court, the accused conspiring and confederating together with Lordigal Dizon who was killed during the incident and all of them mutually helping and aiding one another while armed with knives and guns with intent to gain and by means of violence and intimidation did then and there willfully, unlawfully and feloniously take rob and divest one Almario De Guzman y Tengco, sum of money amounting to P1,000.00 to the latter's prejudice and damage in the said amount of P1,000.00 and that by reason or on the occasion of the crime robbery said accused, with intent to kill did then and there wilfully unlawfully and feloniously attack assault and shoot said Almario De Guzman y Tengco with a gun, hitting him on the chest, thereby inflicting upon him gunshot wound which directly caused his death."

That for robbery contains the following accusatory portion:

"On or about May 12, 2002, in Pasig City and within the jurisdiction of this Honorable Court, the accused, conspiring and confederating together, with one Lordigal Dizon who was killed during the incident and all of them mutually helping one another, while armed with knives and guns, with intent to gain and by means of violence or intimidation did then and there willfully, unlawfully and feloniously take, rob and divest one Orlan Alcantara y Remudario of his wallet containing cash money amounting to P300.00 to the damage and prejudice of the latter in the aforementioned amount.

Contrary to law."

Upon arraignment on May 15, 2002, both appellants pleaded not guilty to the offenses charged. Trial on the merits ensued in due course.

## ***The Facts***

### ***Version of the Prosecution***

The prosecution presented as witnesses the private complainant, Orlan Alcantara, the police investigators, PO1 Glen Aculana and PO3 Aaron Samal, and Dr. Ma. Cristina B. Freyra.

The Solicitor General summarized the case for the prosecution as follows:

"About 6:30 in the morning of May 12, 2002, a passenger's jeepney with plate No. DWL-381 bound for Cubao, Quezon City was traveling along Marcos Highway, Barangay Santolan, Pasig City. Three (3) male passengers who earlier boarded the jeepney at Cogeo, Antipolo City suddenly announced a hold-up and ordered the driver to slow down. Two (2) of the robbers were armed with knives while one (1) was armed with a .38 caliber revolver. The robbers looted the passengers of their money, cellular phones and other personal belongings, which they placed inside a bag. Orlan Alcantara, the jeepney conductor, and Almario de Guzman, the driver, were divested of their money in the amounts of P300.00 and P750.00, respectively. When the jeepney came to a full stop, Alcantara and De Guzman fled for their safety. Despite Alcantara's warning, De Guzman returned to the jeepney to retrieve the keys from the ignition. Alcantara trailed him.

An unidentified male passenger, armed with a .45 caliber gun, fought with the robbers who were later identified as Lordigal Dizon and appellants. Lordigal Dizon was fatally shot in the chest while his brother, appellant Louie Dizon, was hit in the arm. While appellant Dizon was trying to wrestle the gun from the unidentified man, the gun went off and fatally hit De Guzman. Appellant Michael Ortal tried to escape but he was eventually caught and mauled by the bystanders after the unidentified man called out for help.

Alcantara brought De Guzman to the hospital but the latter was pronounced "dead on arrival" (DOA). Meanwhile, PO1 Glen Aculana was on mobile duty along with PO1 Bueneres Cruz when they received a radio dispatch regarding an ensuing robbery along Marcos Highway. When they arrived at said place, the bystanders handed over to them appellant Ortal. Ortal informed them that his companion, appellant Dizon, was injured and sprawled on the street.

Dizon was brought by the policemen to the hospital while Ortal was taken to the Marikina Police Station. The Pasig Police Station took custody of Ortal after it was determined that the locus criminis was in Pasig City.

PO3 Aaron Samal, who was assigned to the Criminal Investigation Bureau of the Pasig Police Station, was dispatched to the crime scene to investigate the incident together with Major Tomasito Clet, SPO1 Rogelio

Villanueva and PO1 Jonas Nepales. They headed to the Marikina Police Station and took custody of Ortal. They then proceeded to the Amang Rodriguez Memorial Hospital and arrested Louie Dizon who was being treated for his gunshot wound. Thereafter, they went to the Quirino Memorial, Medical Center, together with Ortal, to locate the bodies of Lordigal Dizon and Almario de Guzman. Ortal identified Dizon's body while De Guzman's body was identified by his relatives.

De Guzman's relatives informed the policemen that the passenger jeepney was left at the hospital's parking area. The police checked it out and retrieved from the jeepney one (1) fan knife, one (1) dagger, four (4) empty shells of a .45 caliber gun, one (1) blood-stained yellow handkerchief and one (1) backpack.

Dr. Ma. Cristina B. Freyra, medico-legal officer of the Eastern Police District conducted a post-mortem examination on the body of De Guzman. Based on her findings, De Guzman died due to hemorrhagic shock as a result of a gunshot wound on the chest."

For the defense, appellants Louie Dizon and Michael Ortal, Louie's mother, Grace Dizon, and Meriam Lopez testified.

In the main, the defense insists that appellants were merely mistaken for robbers. Thus.

"...[O]n the date and time in question, accused Louie Dizon and his brother Lordigal boarded a jeepney in Cogeo, Antipolo City bound for Cubao, Quezon City, the jeepney which was almost in full capacity, stopped for one more passenger along Marcos Highway, Santolan Pasig City. An unidentified man, who smelled of liquor, boarded the jeepney and almost tripped on Lordigal's foot. He berated Lordigal saying, "Putang-ina mo! Pakalat-kalat kasi yang paa mo!" Lordigal apologized but after several minutes, the man drew out a .45 caliber gun and fired and hit Lordigal. Then the man shouted, "Tulungan ninyo ako, tulungan niyo ako, mga hold-uppers!" The man continued firing his gun and hit Louie Dizon's left arm. The man also hit the driver, Almario de Guzman who had earlier scampered away but returned to the jeepney to get the key from the ignition.

The man tried to shoot Louie Dizon again but failed because the trigger jammed. Dizon jumped out of the jeepney but was immediately collared by the crowd.

Accused-appellant Ortal boarded the same jeepney. He then observed an unidentified passenger shouting invectives at Lordigal Dizon. The latter got angry and quarreled with the man. After a few minutes, the man shot Lordigal and shouted "Hold-uppers, hold-uppers!". The man also shot the driver of the jeepney. When Ortal alighted from the jeepney, the people around seized him and mauled him. The policeman who arrived at the scene picked him up, brought him to the station and later to the hospital.

Meriam Lopez corroborated the version of the accused-appellants stating

that while on board the passenger jeepney, an unidentified passenger, an unidentified passenger uttered "Putang-ina mo! At a young male passenger (Lordigal), who retorted "Putang-ina mo rin! After an exchange of vicious remarks, the unidentified passenger drew a gun and pointed it at the passenger in front of her. She immediately told the drivers to stop. As she alighted from the jeepney, she heard three gunshots. She never heard anybody utter the word "hold-up"

Grace Dizon identified herself in court as the mother of Lordigal Dizon. She declared that the barangay council of San Isidro, Antipolo authorized her family to solicit financial assistance for Lordigal's internment." [Citations omitted]

### ***The Trial Court's Ruling***

Finding the evidence for the prosecution worthy of credence, the trial court went on to render its appealed May 21, 2003 Judgment, the *fallo* of which reads:

"WHEREFORE, the Court finds Michael Ortal y Mendez and Louie Dizon y Comendador Guilty beyond reasonable doubt as Principal(s) of the crime of Robbery with Homicide and there being neither mitigating nor aggravating circumstance, they are hereby sentenced to suffer the penalty of Reclusion Perpetua and to indemnify the heirs of Almario de Guzman the amount of P750.00, as actual damages, P50,000.00, for his death, and P50,000.00, as moral damages, plus the costs of suit.

The Court also finds Michael Ortal and Louie Dizon guilty beyond reasonable doubt as principal(s) of the crime of Robbery (Hold-up) and there being neither mitigating nor aggravating circumstance, and applying the Indeterminate Sentence Law, they are hereby sentenced to suffer the penalty of Four (4) Years and Two (2) Months of Prison Correccional, as minimum, to Eight (8) Years and Twenty (20) days of Prison Mayor, as maximum, and to indemnify Orlan Alcantara the amount of P300.00 as actual damages, plus the costs of suit.

SO ORDERED."

### ***The Issues***

Unconvinced, appellants interposed this appeal<sup>[2]</sup> contending that the trial court gravely erred in not giving weight and credence to the defense witnesses' testimonies and in finally finding them guilty of the crimes charged.<sup>[3]</sup>

### ***The Court's Ruling***

It is apt to stress that when the credibility of the witnesses is in question, the trial court's calibration of their testimonies and the assessment of their probative weight are accorded by the appellate court respect, if not conclusive effect, absent any clear showing that the trial court has overlooked, misconstrued, or misinterpreted some facts or circumstance of weight or substance which, if considered, might affect the result of the case<sup>[4]</sup>, or that it has acted arbitrarily in its appreciation of the facts. This is because the trial court has the unique advantage of observing at close