

EN BANC

[G.R. NO. 171449, October 23, 2006]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JOSE D. LARA @ JOSE KALBO, ACCUSED-APPELLANT.

DECISION

CHICO-NAZARIO, J.:

For review is the Decision^[1] of the Court of Appeals in CA-G.R. CR-H.C. No. 01140 which affirmed with modification the Decision^[2] of the Regional Trial Court (RTC) of Caloocan City, Branch 128, finding accused-appellant guilty of Robbery with Homicide, Qualified Illegal Possession of Firearm and Robbery.

On 31 January 1997, appellant Jose D. Lara, a.k.a. Joe Kalbo, was charged with Robbery with Homicide, Qualified Illegal Possession of Firearm and Robbery in Criminal Cases Nos. 97-13706, 97-13707 and 97-13708, respectively, before the RTC of Antipolo, Rizal, under the following Informations:

CRIM. CASE NO. 97-13706

That on or about the 27th day of January, 1997, in the Municipality of Antipolo, Province of Rizal, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused with intent of gain and by means of violence, force and intimidation, did then and there willfully, unlawfully and feloniously take, steal and carry away from Chito B. Arizala and divest him of a NORINCO 12 Gauge Shotgun with Serial No. 9600942, while the latter was in the performance of his duties as a Security Guard of Taurus Security Agency and Allied Services, without the consent of said Chito Arizala nor of the owner of the shotgun, Napoleon Y. Arnaiz, operator of said security agency, to the damage of the latter in the amount of P11,900.00 representing the value of the said shotgun, and by reason or on the occasion of the said robbery, and in pursuit of his evil intent and to defend possession of the stolen shotgun, said accused with intent to kill, and with treachery and evident premeditation, did then and there willfully, unlawfully and feloniously shot said Chito B. Arizala inflicting (sic) upon the latter mortal injuries thereby causing his instantaneously death.^[3]

CRIM. CASE NO. 97-13707

That on or about the 27th day of January 1997 in the Municipality of Antipolo, Province of Rizal, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused with intent to possess firearms with ammunition, and without authority or license to possess said firearms, nor permit to carry them outside his residence, did then

and there willfully, unlawfully and feloniously have in his custody, control and possession a pistol of still unknown make and caliber and a NORINCO 12 Gauge shotgun with Serial No. 9600947 and having said firearms in his possession, did then and there willfully, unlawfully and feloniously use the same in killing Chito B. Arizala.^[4]

CRIM. CASE NO. 97-13708

That on or about the 27th day of January 1997 in the Municipality of Antipolo, Province of Rizal, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with intent of gain and by means of force, violence and intimidation, did then and there willfully, unlawfully and feloniously rob and divest Chito Arizala of and take away from him, while the latter was in the performance of his duties as a Security Guard of Taurus Security Agency and Allied Services, a NORINCO 12 Gauge Shotgun with Serial Number 9600947 with live ammunition valued at P11,900.00 and owned by Napoleon Y. Arnaiz without the said security guard's or the owner's consent, to the latter's damage in the aforementioned amount.^[5]

Upon motion by the Public Prosecutor, Criminal Cases Nos. 97-13707 and 97-13708 cases, which were raffled to Branch 74, were ordered consolidated with Criminal Case No. 97-13706 before Branch 71 of the same court.^[6] On 16 April 1999, the cases were transferred to Branch 73, the latter being the branch designated to try heinous crimes.^[7]

When arraigned on 3 June 1999, appellant, with the assistance of counsel *de oficio*, pleaded not guilty to the crimes charged.^[8] On 27 July 1999, upon agreement by the parties, the pre-trial of the cases was terminated. Thereafter, the cases were jointly tried.^[9]

The People's evidence are as follows:

The deceased victim, Chito B. Arizala, was a security guard of the Taurus Security Agency and Allied Services designated as officer-in-charge of the security detachment, assigned to guard the premises of the Sanchez Estate at Manalite II, Brgy. Sta. Cruz, Antipolo City, then a municipality of Rizal. Among the security guards under him was Nonilio Marfil, Jr. (TSN, Oct. 19, 1999, p. 8).

Benjamin Aliño, friend of the victim, testified that at around 6:00 p.m. of January 27, 1997, he met the victim Chito Arizala at the latter's place of work, Sanchez Estate, Manalite II, Brgy. Sta. Cruz, Antipolo City to collect his P150.00 debt (TSN, Jan. 16, 2001, pp. 4-5). After Aliño was paid and when he was about to leave, a bald man (appellant) arrived and had an argument with Arizala regarding the entry of construction materials being brought in by the squatters to the Sanchez Estate which Arizala opposed (TSN, *ibid.*, pp. 6, 15-16). Without any warning, appellant punched Arizala (TSN, *Id.*, p. 8). When Arizala fell to the ground, his shotgun slid from his shoulder and likewise fell down on the ground. Appellant then immediately grabbed and cocked the shotgun

(TSN, Id., pp. 8, 16-17). Thus, Aliño shouted, "Chito, takbo na!" Arizala ran towards the direction of the security guards' barracks, while Aliño proceeded to the direction of his home at Kamandag, Mayamot, Antipolo City. Appellant could not fire the shotgun since there was a number of people in the directions to which Arizala and Aliño ran. The following day, Aliño went to Masbate to buy fish. On February 13, 1997, when Aliño went back home, he learned that Arizala had been killed (TSN, Id., p. 11). When asked to identify appellant in court, Aliño stated that appellant was not in the court room. He, thus, identified appellant through the latter's picture (TSN, Id., pp. 12-14).

Nonilio Marfil testified that on January 27, 1997, he was employed as a security guard by Napoleon Arnaiz's Taurus Security Agency and was assigned to guard the construction materials at Sanchez Estate, Upper Manalite II, Brgy. Sta. Cruz, Antipolo City, along with other guards whom he identified as Yap, Velasco, Garcia, Abellar, and the victim Chito Arizala (TSN, Oct. 19, 1999, p. 8).

Around 6:15 p.m. of said date, while Marfil was waiting for his reliever at their barracks, Arizala arrived and asked for Marfil's shotgun because the one assigned to him was grabbed and taken away by appellant (TSN, Ibid., p. 9). Since the victim was both his superior and Officer-in-Charge, Marfil obliged (TSN, Id., p. 10). Arizala then instructed him and the other security guards to follow him. Thereafter, Arizala went ahead carrying Marfil's service shotgun.

When Arizala reached the corner, Marfil, who was following him, suddenly heard a gunshot and saw Arizala slowly falling to the ground. Then, he heard two or more shots and saw Arizala fall supine on the ground. When he was about to approach Arizala to get the shotgun and to help the latter, he heard another shot. So, he moved back for about ten (10) meters. Immediately thereafter, he saw appellant emerge from behind a concrete wall and take the shotgun that was lying on top of the chest of the fallen victim (TSN, Id., pp. 12-13). Fearing that he would be shot next, Marfil ran back to their barracks and asked his fellow security guards to look after Arizala's body. After which, he proceeded to the place of the victim's family to inform them of the incident (TSN, Id., p. 13).

When Marfil, with Arizala's wife, went back to the crime scene, the people were already milling around the area and, thereafter, the police arrived. Pictures of the victim and the crime scene were taken (Exhibits "I" to "L") and an investigation was conducted (TSN, Id., pp. 14-15). Marfil positively identified appellant as well as the subject pictures taken from the crime scene.

Roque D. Ogrimen, testified that around 6:20 p.m. of January 27, 1997, he was inside his house located at Upper Manalite II, Brgy. Sta. Cruz, Antipolo City. However, when he heard three (3) gunshots, he went out to investigate. He saw his water drum hit, causing its contents to leak through the three holes, and his window pane was broken. Ogrimen likewise saw appellant from a distance of about twenty-five (25) meters

and witnessed what the latter did to Arizala, because his view was unblocked (TSN, July 29, 1999, p. 21) and the crime scene was well lighted (TSN, Ibid., pp. 21-22). When he first saw Arizala, the latter was already lying supine on the ground. Then Ogrimen saw appellant, who was holding a handgun. Appellant approached Arizala, belted the handgun, took the shotgun that was then lying on top of Arizala's body, cocked said shotgun, then stepped backwards, and fired two (2) shots at the fallen Arizala (TSN, Id., pp. 7-8, 14). After firing the two (2) shots, appellant walked away, holding the shotgun he took from and used to shoot Arizala (TSN, Id., pp. 9, 27-28).

Thereafter, Ogrimen went to the police station to report the incident. Thus, SPO1 Reynaldo Ancloste responded to Ogrimen's call and supervised the picture-taking of the crime scene. Ogrimen identified the photographs of the drum riddled with holes and his broken glass window (Exhibits "A" and "B"). SPO1 Ancloste was also shown in the photographs recovering bullets from the drum.

Ogrimen explained that there is no mention of appellant shooting the victim with a shotgun in his Affidavit dated January 27, 1997 (Exhibit "I"), because this contains only his answers to the questions of the investigating officer at the time he executed the subject affidavit (TSN, July 29, 1999, p. 15).

Salvador Tejada, an employee of Taurus Security Agency and Allied Services, testified that victim Chito Arizala and Nonilio Marfil, Jr. were, on January 27, 1997, their employees as security guards. At the time of the incident, Arizala was the Officer-in-Charge of the Sanchez Realty Estate located at Manalite II, Sta. Cruz, Antipolo City, where Marfil was also assigned. As such, Arizala and Marfil were issued service firearms pursuant to Mission Order Nos. 96080012 and 96080013, both dated August 12, 1996, respectively (Exhibits "C" and "D"; TSN, July 29, 1999, p. 46). The two (2) firearms issued were with Serial No. 9600942 (to Arizala [TSN, Ibid., 49]) and No. 9600947 (to Marfil [TSN, Ibid., p. 46]), both with 5 ammunition (Exhibits "E" and "F"), and both valued at P11,900.00 each (Exhibits "C" and "H" [TSN, Ibid., p. 50]).

The subject firearms were both Norinco Caliber Shotgun 12 gauge, covered by temporary license issued on August 15, 1996 and September 6, 1996, respectively, that remained valid and in force until the issuance of the regular computerized licenses, namely, Firearm License Nos. RL-M76C1610878 and RL-M76C1618080 on April 28, 1997 (TSN, Jan. 25, 2000, pp. 7-8).

The fact of the loss of the two subject firearms was reported and, accordingly, the Firearms and Explosives Division had declared them lost per Official Receipt 1726642 dated September 7, 1999, covering the payment of an administrative fine.

SPO1 Reynaldo Ancloste conducted the on-the-spot investigation of the shooting of Arizala on January 27, 1997 at Upper Manalite II, Sta. Cruz, Antipolo City.

From the crime scene, he was able to recover two (2) pieces of spent shotgun shells and three (3) bullets (TSN, Nov. 14, 2000), for which he requested the "PCCL and Ballistic Command" for ballistic examinations (TSN, Ibid., p. 6). He personally delivered the request letter to the Criminal Investigation Division at EDSA Kamuning, Quezon City (TSN, Nov. 14, 2000, p. 8; Exh. "X"). He identified the spent shells he turned over to the said office through the initial "A" that he wrote thereon.

SPO1 Anclothe supervised the pictures taken at the scene of the crime (TSN, Nov. 14, 2000, pp. 15-17; Exhibits "D", "I", "K", "L"). When he arrived at the crime scene, the victim was already lying dead on the ground (TSN, Nov. 14, 2000, p. 21).

P/Sr. Insp. Abraham Pelotin, Firearms Examiner of the PNP Crime Laboratory, Northern Field Office, testified that between February 3 and 19, 1997, he conducted a ballistic examination on some cartridges of a 12-gauge shotgun and three deformed bullets/pellets which were involved in the shooting of Arizala. He conducted a test firing and compared the specimen, subjecting them to physical and microscopic examination. His testing/examination was made upon the request by the Criminal Investigation Office (Exhibit "N"; TSN, Nov. 17, 1999, pp. 4-6, 11-12).

P/Sr. Insp. Pelotin identified his Report FAIB-009097 (Exhibit "M") and declared that the pellet he examined measured 3.3 millimeters, which, based on the size and weight, appears to have come only from a 12-gauge shotgun. Pelotin admitted that although the pellet may be similar to that of a 9-gauge shotgun, however he clarified that no striation on any two bullets are alike (TSN, Ibid., pp. 6-12).

SPO2 Wilfred Tagola of the Firearm and Explosives Division, Camp Crame, Quezon City, testified on the authenticity of the Certification dated October 18, 1999 duly issued by his office (Exhibit "D") showing that two (2) Norinco Shotguns, 12-gauge with Serial Number 9600942 and Serial Number 9600947 at the time of Arizala's shooting on January 27, 1997, were duly licensed and registered in the Firearms and Explosives Division, Camp Crame, Quezon City to Taurus Security and Allied Services (Exhibits "O" and "R") (TSN, March 28, 2000, pp. 6-7).

SPO2 Tagola likewise testified on the authenticity of the Certification dated June 1, 2000, stating that appellant Jose David Lara of Upper Manalite II, Brgy. Sta. Cruz, Antipolo City is not a licensed/registered firearm holder of any kind or caliber (Exhibit "W").

Dr. Floresto Arizala, Jr., a medico-legal officer, testified that he conducted an autopsy on the body of the victim. His finding that the victim sustained "gunshot wounds as well as shotgun wounds" was contained in his Medico-Legal Report No. 97-177 (Exhibit "S"). He likewise illustrated in two anatomical sketches the injuries sustained by the victim (Exhibits "T" and "U"; TSN, March 29, 2000, pp. 7-8). After his autopsy of the victim, he issued a Certificate of Post Mortem Examination (Exhibit "V").