

FIRST DIVISION

[G.R. No. 122737, February 17, 1999]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
SERGON MANES AND RAMIL MANES, ACCUSED-APPELLANTS.**

D E C I S I O N

PARDO, J.:

The case before the Court is an appeal taken by accused Sergon Manes and Ramil Manes from the judgment^[1] of the Regional Trial Court, Branch 25,^[2] Iloilo City, convicting them of murder and sentencing them to each "suffer the penalty of *reclusion perpetua* with the accessory penalties as provided in Article 41 of the Revised Penal Code" and "to indemnify the family of their victim in the amount of P50,000.00 plus P21,250.00 as expenses for the burial, wake and other related matter and to pay the costs."

We affirm the conviction.

On July 12, 1991, the Provincial Prosecutor of Iloilo Province filed with the Regional Trial Court, Iloilo City, an information charging the accused with murder, as follows:

"x x x

"That on or about the 23rd of June, 1991, in the Municipality of Badian, Province of Iloilo, Philippines, and within the jurisdiction of this Honorable court, the above-named accused, conspiring, confederating and mutually helping one another to better realize their purpose armed with a knife and a .38 caliber revolver respectively, with treachery and/or evident premeditation, did then and there wilfully, unlawfully, and feloniously assault, attack, stab and shot Nicanor Tamorite with the knife and .38 caliber revolver with which they were then provided, inflicting upon the said Nicanor Tamorite stab wounds and gun shot wounds on the different parts of his body which caused his death immediately thereafter."^[3]

The prosecution recommended no bail for the provisional liberty of the accused.

On July 22, 1991, the trial court issued a warrant of arrest against the accused. On October 18, 1991, the trial court ordered the case archived for failure to locate the two accused.

On June 24, 1992, or about a year after, accused Sergon and Ramil Manes were arrested in Romblon, Romblon. On July 6, 1992, they were brought to Iloilo City.

Upon arraignment on September 17, 1992, both accused pleaded not guilty to the

information, and, thereafter, the court proceeded to try the case.

Meantime, on August 25, 1992, the accused filed a petition for bail, which was opposed by the prosecution. The trial court, however, did not hear the petition for bail. Neither did the accused invoke the right to bail at any stage of the trial.

The prosecution presented six witnesses,^[4] two of whom were eyewitnesses to the crime, while the defense presented three,^[5] two of whom were the accused themselves.

On January 13, 1995, the trial court rendered judgment convicting the accused of murder, the dispositive portion of which reads as follows:

"x x x

"Accordingly, finding the accused, Ramil Manes and Sergon Manes, guilty of murder beyond reasonable doubt, they are therefore sentenced to each suffer the penalty of Reclusion Perpetua with the accessory penalties provided in Article 41 of the Revised Penal Code and they are also ordered to indemnify the family of the victim the amount of P50,000.00 plus P21,250.00 as expenses for the burial, wake and other related matter and to pay the costs."^[6]

On February 10, 1995, both accused appealed to this Court.^[7]

In the appeal, accused questioned the trial court's failure (a) to hear the petition for bail; (b) to consider defense of relative in favor of Ramil Manes; and (c) to take note that Sergon Manes was a mere victim of Tamorite's unlawful aggression.

The antecedent facts are as follows:

(a) According to the prosecution

On June 23, 1991, at about 5:00 in the afternoon, Alan Catequista together with Nicanor Tamorite and Jose Cubita, went to see a basketball game at the barangay plaza. When the game was over, Allan approached and invited Nicanor Tamorite to go home; at the time, he was still seated. Accused Ramil Manes approached Nicanor Tamorite and pointed a .38 caliber revolver at him, saying "It is a bad luck you did not kill me during the fiesta in Barangay Cabayugan. Now I will be the one to kill you." Nicanor Tamorite ran to Allan Catequista and used him as a shield from Ramil.

^[8] At that point, Alan Catequista heard a thud and as he looked back, he saw accused Sergon Manes with a gory knife and he also saw Nicanor Tamorite running away, with blood on his back. Ramil Manes pursued Nicanor Tamorite and shot him hitting him at the back, just above the waistline. Both accused continued to chase Nicanor Tamorite who ran towards the premises of the house of Ading Ablado. Ramil Manes fired two more shots. It could not be determined whether those shots hit Nicanor Tamorite as he and the accused were already inside the premises of the fence of Ading Ablado.^[9] Jose Cubita who was near Nicanor Tamorite when the two accused chased him did not render assistance to him.^[10] After Alan Catequista heard the two shots, he and Jose Cubita ran home. Alan Catequista told his father and uncle that Sergon Manes stabbed Nicanor Tamorite and that Ramil Manes shot

him. Alan Catequista, his father, uncle, Jose Cubita and the mother of Nicanor Tamorite then went to where the body of Nicanor was in the downhill portion of the premises of the house of Ading Ablado. Nicanor was lying on his back with two (2) wounds on the breast, one (1) gunshot wound and one (1) stab wound.^[11]

(b) According to the accused

According to accused Ramil Manes, in the afternoon of June 23, 1991, he was at home cooking. At around 5:00 to 5:30, he heard shouts coming from the direction of the barangay basketball court, which was about ten (10) meters away from his house. He went to the window to check what it was. He saw his younger brother Sergon Manes lying on the concrete pavement and several persons were ganging up on him, three of whom he identified as Nicanor Tamorite, Alan Catequista and Jose Cubita. They kept on boxing and kicking his brother prompting him to come to the latter's aid. On his way out, he saw a gun on top of the table and brought it with him to the basketball court.

While on his way to the basketball court, Ramil fired a warning shot to prevent Nicanor Tamorite from stabbing his brother, Sergon. Nicanor persisted in his pursuit of Sergon, with a knife in his hand. Sergon was about three meters ahead of Nicanor who was about ten meters ahead of the pursuing Ramil. Ramil fired another shot which hit Nicanor who fell to the ground. Meanwhile, Sergon managed to flee. Ramil also fled to the direction of the sugarcane field as soon as he fired the second shot because he saw the group of Alan Catequista approaching, armed with guns.^[12] Ramil and his brother Sergon went into hiding and only surfaced a year later when they were arrested in Romblon.

We find the facts as those established by the prosecution's evidence.

The appeal has no merit. The trial court did not err in finding the appellants guilty of murder.

Appellants contend that the trial court committed a serious error of law when it went on with the trial of the case without hearing the petition for bail that was set for hearing several times.

Under the law,^[13] in offenses punishable by *reclusion perpetua*, life imprisonment or death, the accused has no right to bail when evidence of guilt is strong. The court must hear a petition for bail to determine whether the evidence of guilt is strong before deciding to grant or deny bail to the accused.^[14]

While the accused can apply for bail and have the court hear his application summarily and promptly, such right may be waived expressly or impliedly.^[15]

In this case, the trial court proceeded to try the case without resolving the petition for bail that appellants filed. However, the latter did not call the attention of the trial court to their unresolved application for bail. It was only in the appeal that they raise this issue. Thus, for failure to bring to the attention of the trial court at the earliest opportune time, appellants are deemed to have waived their right to bail.

What is more, the issue has been rendered academic by the conviction of the