

## FIFTH DIVISION

[ CA-G.R. SP No. 129679, March 06, 2014 ]

**CARL DACTIL DC. DE GUZMAN, PETITIONER, VS. GERMAN L. PENARANDA AND HON. MARIA FLORENCIA B. FORMES-BACULO AS PRESIDING JUDGE OF BRANCH 34, REGIONAL TRIAL COURT, CALAMBA CITY, RESPONDENTS.**

### DECISION

#### CARANDANG, J.:

Petitioner filed the instant petition<sup>[1]</sup> to assail, on the ground of grave abuse of discretion amounting to lack or in excess of jurisdiction, the Order<sup>[2]</sup> dated January 14, 2013 of the Regional Trial Court of Calamba City, Branch 34 denying his petition to post bail.

Petitioner likewise assails the trial court's Order<sup>[3]</sup> dated March 18, 2013 denying his motion for reconsideration.

The facts are as follows:

On March 04, 2012, at around 1:30 in the morning, victim Ray Bernard Reyes Peñaranda (*or* Ray) was held up along F.O. Santos St., Barangay Batong Malake, Los Baños, Laguna. His Boller type wristwatch was not only taken from him but he was also stabbed by the robbers causing his immediate death.

On April 18, 2012, an Information for Robbery with Homicide was filed against petitioner Carl Dactil de Guzman (*or* de Guzman) and two other co-accused, Joseph V. Beltran (*or* Beltran) and Tyronne Kennedy M. Terbio (*or* Terbio). The case was raffled to the Regional Trial Court of Calamba City, Branch 34, docketed as RTC Crim. Case No. 19120-12-C.

De Guzman was implicated in this case on the basis of the sworn statements given by Myrhen Kaye Jamo (*or* Myrhen) and Reywilson Vizconde (*or* Reywilson), the victim's companions, when the robbery happened and the extra-judicial confession dated March 6, 2012 of co-accused, Joseph Vellila Beltran. Detailing the respective participation of the robbers, Beltran stated that he acted only as look-out while De Guzman was the driver of the motorbike with Terbio as the backrider and the knife-wielder. The three accused were later arrested. Petitioner De Guzman is detained at the Bureau of Jail Management and Penology (BJMP), Los Baños, Laguna.

Being charged of a non-bailable offense, De Guzman filed on May 3, 2012 a Petition to Post Bail<sup>[4]</sup> claiming that the evidence of the prosecution is not strong to deny him his constitutional right to bail. He claims that there is no direct and strong evidence pointing to him as one of the perpetrators. The sworn statements executed by Reywilson, who is a minor, should not be admitted because it was done without the assistance of his parent/guardian. Likewise, Reywilson's identification of him

through photograph is questionable, done by a minor who just witnessed a brutal killing. De Guzman denied that he personally knew Beltran.

During the hearing of his petition, the prosecution presented Gemar Coliao [or Gemar] who was allegedly caught in a CCTV camera as the one sitting in front of the eatery located along F.O. Santos St., Barangay Batong Malake, Los Baños, Laguna when the robbery happened.

He testified that while seated in front of the eatery, he noticed a motorbike with two passengers on board pass by the street three times. He recognized the driver of the motorbike and identified him in court as accused de Guzman. He likewise noticed two students running inside the eatery. A moment later, another student arrived and immediately sat down in front of him because of injuries he sustained on his chest. Somebody called a tricycle and brought the injured student to the hospital. Gemar learned from the two students who first went inside the eatery that the injured person was their companion and a victim of a holdup. He admitted that he did not witness the actual holdup.

Giving weight to the 1] sworn statements of Reywilson and Myrhen, 2] extra-judicial confession of co-accused Beltran and 3] the testimony of Gemar, who all positively identified petitioner De Guzman as the driver of the motorbike and one of the perpetrators, and, finding that it is not physically impossible for the petitioner to be at the scene of the crime, the trial court denied his petition for bail. It ruled:

"The Court finds that the evidence of guilt against the accused is strong on several points: *first*, very telling is the positive identification of accused de Guzman by his co-accused Beltran; *second*, there is positive identification of accused de Guzman by Reywilson and prosecution witness Gemar; and, *third*, the assertion that accused de Guzman was in Siniloan, Laguna in the evening of March 3, 2012 does not preclude him to be in Los Baños, Laguna in the early dawn of March 4, 2013 and be back in Siniloan in the early morning of the same day."

His motion for reconsideration was denied. Imputing grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the trial court in denying his petition for bail, he filed this petition.

Petitioner avers that the trial court cannot rely on the affidavits of Myrhen, Reywilson and Beltran because these are hearsay evidence as the affiants were not presented in court. Since they did not testify in court, petitioner was not given any opportunity to cross-examine them. Petitioner insists that the determination of whether or not the evidence of guilt is strong should have been based solely on the testimony given by Gemar without giving weight to the sworn statements of Myrhen, Reywilson and Beltran. As to the testimony of Gemar, it did not establish anything against him because Gemar did not even witness the actual robbery-hold up incident. Gemar did not categorically state and prove that petitioner is involved in the robbery and killing of the victim. He merely stated that De Guzman was the driver of the motorbike he noticed passing by three times.

On the otherhand, Private respondent explains in his Comment<sup>[5]</sup> that at the hearing held on December 14, 2012 in connection with petitioner's application for bail, petitioner's counsel did not object to the Manifestation of the private prosecutor that the documents on file shall be considered in the resolution of the application for bail. Private respondent's counsel made a lengthy recital of the documents on file