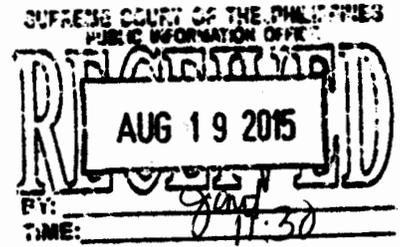




Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE



Sirs/Mesdames:

Please take notice that the Court, First Division, issued a Resolution dated July 29, 2015 which reads as follows:

“G.R. No. 200889 (People of the Philippines, Plaintiff-Appellee, v. Casiano Leus y Malabanan, Accused-Appellant). - For review is the conviction of accused-appellant Casiano Leus y Malabanan (Leus) for the crime of Robbery with Homicide, punishable under Article 294 of the Revised Penal Code, as amended, by the Court of Appeals,¹ affirming the Decision² of the Regional Trial Court (RTC), Branch 13, Lipa City, Batangas, in Criminal Case No. 0122-2005, sentencing him of *reclusion perpetua*.

The Information

That on or about the 23rd day of October, 2004 at about 12:15 o'clock (sic) in the afternoon at Brgy. Lumbang, Lipa City, Philippines and within the jurisdiction of this Honorable Court, accused Casiano Leus, together with one John Doe, whose identity and whereabouts are still unknown, conspiring and confederating together, acting in common accord and mutually aiding one another, with intent to gain and without the consent of the owner thereof, did then and there willfully, unlawfully and feloniously take, rob and carry away a bag containing undetermined amount of collection money owned by RBW Marketing represented by Leo Z. de Jose, to the damage and prejudice of the said owner.

That on the occasion or by reason of said robbery, the above-named accused, with intent to kill and without any justifiable cause, then armed with a firearm, did then and there willfully, unlawfully and feloniously attack, assault and shoot with the use of said firearm one Benjie de Mesa, thereby inflicting upon the latter gun shot wounds which directly caused his death.³

- over – nine (9) pages

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¹ Penned by Associate Justice Hakim S. Abdulwahid, with Associate Justices Ricardo R. Rosario and Danton Q. Bueser concurring; *rollo*, pp. 2-17.
² Penned by Judge Noel M. Lindog; *CA rollo*, pp. 11-24.
³ Records, p. 1.

Upon arraignment, Leus pleaded not guilty to the crime charged.

During trial, the prosecution presented three witnesses, namely: Analyn Pajaron (Pajaron), Benjie de Mesa's (De Mesa's) sister; Leo de Josef (De Josef), De Mesa's helper; and Dr. Antonio Vertido (Dr. Vertido), a medico-legal officer of the National Bureau of Investigation, Southern Tagalog Region. On the other hand, the defense presented four witnesses, namely: accused-appellant Leus; Senior Police Officer 1 Ranilo Limbo (SPO1 Limbo) of the Philippine National Police, Lipa City; and Joel Caraan (Caraan) and Eduardo Cajucom (Cajucom), jeepney dispatchers.

Version of the Prosecution

De Mesa and De Josef were employees of RBW Marketing (RBW). De Mesa was a delivery truck driver while De Josef was a delivery helper. On 23 October 2004, while De Mesa and De Josef were on board an RBW delivery truck after delivering different merchandise and collecting payments from RBW's clients in Batangas City Public Market and Bauan, Batangas, on the way home to San Juan, Sto. Tomas, Batangas, along Fiesta Town Mall in Barangay Lumbang, Lipa City, Batangas, they passed upon a motorcycle with two men riding, which suddenly chased them. One of the men riding the motorcycle was later identified as Leus. The identity of the driver remains unknown.

During the chase, Leus fired two shots at the rear wheel of the truck. Missing aim, the motorcycle sped up. When it finally overtook the truck, Leus fired at De Mesa. Wounded, De Mesa stopped the truck and ordered De Josef to run for his life. While fleeing away from the incident, De Josef looked back and saw Leus fire at him, but missed. Leus then alighted from the motorcycle and walked closer towards the truck, opened the door, and fired three more shots at De Mesa. After taking away the bag containing De Mesa's collection, Leus fled the crime scene.

Dr. Vertido, in his Autopsy Report No. BTNO-04-374, discovered that De Mesa sustained four gunshot wounds: one on the left cheek, one on the left abdomen, and two on the left thigh. Dr. Vertido concluded that the gunshot wounds on De Mesa's left cheek, left abdomen, and left thigh were fatal and were fired at a close range of about two feet.

De Mesa's sister, Pajaron, testified on the actual expenses her family incurred for De Mesa's wake and funeral, which amounted to ₱74,745.00.

Version of the Defense

Leus interposed the defense of alibi. As a jeepney driver, Leus posited that he could not have committed the crime because at that time, he was conveying passengers from Tanauan to Laurel, Batangas and that he never passed Lipa City, Batangas on that day. In detail, he testified that at 1:00 p.m. of 23 October 2004, after all his passengers had alighted from his jeepney upon arrival from Tanauan, he lined up at the jeepney terminal and waited for passengers to board his jeepney for a return trip to Tanauan. Because the trip was only until about 3:00 p.m. and he was fourth in the queue, and the possibility of getting passengers by 3:00 p.m. was slim to nil, he decided to just go home.

Leus averred that he was a victim of a frame-up and that his identification was contrived by the police authorities. According to Leus, on 19 November 2004, on his way to Fiesta Mall, Lipa City, two men boarded his jeepney and commanded him to run after a motorcycle. With a gun pointed at him, he complied and chased the motorcycle.

When his jeepney caught up with the motorcycle, one of his two passengers poked a gun at the motorcycle's driver then alighted from his jeepney and took the motorcycle away from its driver, and finally drove away. After witnessing the whole incident, Leus left the scene and lined-up at 9:00 a.m. at the terminal in Tanauan to pick-up passengers and left for Laurel at 9:30 a.m., without reporting the incident.

Upon reaching Sambat, police officers stopped his jeepney and ordered his passengers to alight. During the search, the police officers found a gun in his jeepney. Leus, however, denied ownership of the gun.

The police officers then mauled him and boarded him in a van that brought him to the Sto. Tomas Police Station, where he was subjected to an investigation and was charged with illegal possession of a .38 caliber pistol. He was thereafter detained. The following day, a certain Allan Dukot (Dukot) came to his cell and identified him as the one who carnapped Dukot's motorcycle. Dukot filed a case of carnapping against Leus.

On 22 November 2004, Leus was placed at a police lineup with other detainees at the Sto. Tomas Police Station. During the lineup, a police officer approached De Josef and commanded him to point at Leus.

The defense presented SPO1 Limbo. He described his involvement in the investigation of the case, limited to the following duties: (1) validating the information received by the Chief of Police of Lipa City Police Station that the suspect in a robbery holdup that occurred in Barangay Lumbang had already been arrested; and (2) ascertaining the identity of the suspect of the robbery holdup, as the suspect therein was also the suspect in the present case. SPO1 Limbo testified that he took Leus's photograph, placed it in an album page together with the photograph of three men, and showed it to De Josef, who positively identified Leus as the one responsible for the robbery with homicide on 23 October 2004. To confirm De Josef's positive identification of Leus as the perpetrator of the crime, SPO1 Limbo brought De Josef to the Sto. Tomas Police Station and asked him to identify the suspect in a police lineup. De Josef pointed to Leus.

Caraan, a jeepney dispatcher for the Tanauan-Laurel route at the Tanauan Terminal, testified that on the day of the crime, on 23 October 2004, at 6:10 a.m., he saw Leus at the Tanauan Terminal, waiting in line for passengers. By 12:00 noon, he saw Leus drive off to Laurel after his jeepney was fully boarded by passengers.

Cajucom, also a jeepney dispatcher, but for the Laurel-Tanauan route, and whose aunt is Leus's wife, testified that on 23 October 2004, at around 1:00 p.m., he saw Leus park his empty jeepney at the Laurel Terminal, waiting for passengers. After two hours and with still no passengers in sight, Leus, together with Cajucom, decided to go home instead. Leus dropped off Cajucom in Barangay Malaquilong, and proceeded to Berenayan.

Ruling of the RTC

After trial, the RTC convicted Leus in a Decision dated 7 October 2009 of the robbery with homicide. The dispositive portion of the RTC Decision reads:

WHEREFORE, judgment is hereby rendered finding the accused **Casiano Leus y Malabanan GUILTY** beyond reasonable doubt, as principal, for the crime of *Robbery with Homicide* defined and penalized under *Article 294(1)* in relation to *Article 293 of the Revised Penal Code*, as amended by *Republic Act No. 7659* and hereby imposes on said accused the penalty of *Reclusion Perpetua*. In accordance with

Article 29 of the Revised Penal Code, the period of the detention of the accused at the Provincial Jail of Batangas during the pendency of this case shall be credited to him provided that he voluntarily agreed in writing to abide by and comply strictly with the same disciplinary rules and regulations imposed upon convicted prisoners.

Accused is likewise ordered to indemnify the heirs of the victim **Benjie de Mesa** the following amounts:

- (a) Fifty Thousand Pesos (Php 50,000.00) as civil indemnity;
- (b) Fifty Thousand Pesos (Php 50,000.00) as moral damages;
- (c) Twenty Five Thousand Pesos (Php25,000.00) as exemplary damages; and
- (d) Fifty Thousand Pesos (Php 50,000.00) as actual damages.

Accused is further ordered to return the sum of Twenty Thousand Pesos (Php 20,000.00), representing the amount stolen.⁴

The RTC found that the affirmative testimony of eyewitness De Josef, who positively and categorically identified Leus as the perpetrator of the crime, could not be overturned by Leus's mere denial and alibi. According to the RTC, Leus's alibi deserved no probative weight because it was unsubstantiated by proof. The defense failed to prove that it was physically impossible for Leus to be at the crime scene at the time of the commission of the crime. The RTC noted that Tanauan, Leus's purported location at the time of the commission of the crime, is proximately close to Lipa City, the *locus criminis*.

The RTC further ruled that Leus's testimony did not deserve credence. According to the RTC, Leus's actions after witnessing an alleged carnapping were contrary to the ordinary norms of human conduct and experience. A man's natural reaction under such circumstance was to earnestly report the incident to the police authorities.⁵ However, Leus still managed to perform his regular duties as a jeepney driver despite witnessing an alleged carnapping.

On appeal, the defense attacked the credibility of De Josef as a witness based on the following grounds:

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⁴ Supra note 2, at 23-24. (Emphases and italics supplied.)

⁵ Id. at 21-22.

- (1) the execution of his sworn statement or "*Salaysay*" was on 22 November 2004, or one month after the incident on 23 October 2004, that, because of the lapse of the said period, De Josef's recollection of the incident had diminished;
- (2) it was patently impossible for De Josef to ascertain Leus's identity because (a) when the crime was being committed, he was running for his life, hence, he could not have looked back to enable him to see the suspect's face, (b) there was no clear indication that his view was unobstructed, and (c) the incident occurred within a short span of time;
- (3) Leus's identification was merely a product of SPO1 Limbo's contrivance. De Josef was ordered to point at him as the perpetrator of the crime; and
- (4) De Josef's narration of the incident was fraught with inconsistencies as shown by his testimony that he was shot at but was not hit and altering the same by later claiming that he was uncertain whether the robber fired at him.

Ruling of the Court of Appeals

The Court of Appeals affirmed Leus's conviction. It rejected the defense's alibi. For the defense of alibi to prosper, the defense must meet strictly the requirement of time and place: (1) the defense must prove that "the accused was not at the scene of the crime at the time it was committed[;] and that [(2)] it was physically impossible for the accused to have been at the scene of the crime at the time of its commission."⁶

The Court of Appeals resolved that the defense failed to meet the aforesaid requirements in order for the defense's claim of alibi to be given credence. Based on Leus's testimony, he was conveying passengers to Laurel between 12:00 noon and 1:00 p.m. on 23 October 2004, which meant that it was not physically impossible for him to be at the scene of the crime at the time of its commission. Thus, the defense of alibi is self-serving.

With regard to De Josef's account of the crime, the Court of Appeals gave credence to his straight, direct, simple, and unwavering testimony. De Josef's credibility could not be impeached by the mere passage of time, swiftness of the crime's occurrence, and briefness of witnessing the crime.

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⁶ *People v. Uy*, 664 Phil. 483, 507 (2011).

The Court of Appeals held that the period of time, one month from the commission of the crime, and the recollection of the same in a statement, could not be regarded as sufficient time to warp and distort testimonial recollection. Further, the inconsistencies in De Josef's testimony were minor and trivial matters, which do not diminish the veracity and weight of his positive identification of Leus as the perpetrator of the crime.⁷

On the defense's allegation that Leus's identification was a product of SPO1 Limbo's insinuation, the Court of Appeals held that the records were bereft of any indication that De Josef's identification of Leus as the perpetrator of the crime was tainted by SPO1 Limbo, or by the police authorities' undue or impermissible interference.⁸

With regard to the civil liabilities, the Court of Appeals affirmed the awards of civil indemnity and moral damages but increased the award of actual damages from ₱50,000.00 to ₱74,745.00, as proved by the prosecution evidence, and deleted the award of exemplary damages due to the lack of any aggravating circumstance in the commission of the crime. The dispositive portion of the Court of Appeals Decision reads:

WHEREFORE, the assailed Decision dated October 7, 2009 of the RTC, Branch 13, Lipa City, in Criminal Case No. 0122-2005 is **AFFIRMED with MODIFICATION**, by increasing the amount of actual damages from ₱50,000.00 to ₱74,745.00 and deleting the award of exemplary damages of ₱25,000.00.⁹

Our Ruling

The appeal is not meritorious.

Finding no reversible error in the findings of fact and conclusions of law of the lower courts, the Court resolves to **ADOPT with modifications** the Decision of the Court of Appeals on the award of damages. The award of actual damages be **REDUCED** from Seventy-Four Thousand Seven Hundred Forty-Five Pesos (₱74,745.00) to Fifty Thousand Pesos (₱50,000.00) as only the latter amount was duly supported by an official receipt.

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⁷ *Lumanog, et al. v. People*, 644 Phil. 296, 394-395 (2010).
⁸ Id. at 398.
⁹ Supra note 1, at 17. (Emphases supplied.)

July 29, 2015

WHEREFORE, accused-appellant **CASIANO LEUS y MALABANAN** is found **GUILTY** beyond reasonable doubt of the crime of robbery with homicide punishable under Article 294(1) in relation to Article 293 of the Revised Penal Code, as amended, and is sentenced to suffer the penalty of *reclusion perpetua*. As modified, accused-appellant **CASIANO LEUS y MALABANAN** is **ORDERED** to pay the heirs of **BENJIE DE MESA** the following:

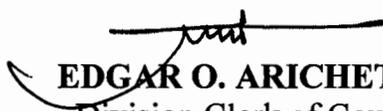
1. Seventy-Five Thousand Pesos (₱75,000.00) as civil indemnity;
2. Seventy-Five Thousand Pesos (₱75,000.00) as moral damages;
3. Thirty Thousand Pesos (₱30,000.00) as exemplary damages; and
4. Fifty Thousand Pesos (₱50,000.00) as actual damages.

Accused-appellant **CASIANO LEUS y MALABANAN** is further **ORDERED** to return the sum of Twenty Thousand Pesos (₱20,000.00), representing the amount stolen.

Interest at the rate of six percent (6%) per annum is likewise imposed on all the damages awarded in this case from the date of finality of this judgment until fully paid.

SO ORDERED.” **SERENO, C.J.**, on official leave; **PERALTA, J.**, acting member per S.O. No. 2103 dated July 13, 2015.

Very truly yours,


EDGAR O. ARICHETA
 Division Clerk of Court
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The Solicitor General (x)
 Makati City

Court of Appeals (x)
 Manila
 (CA-G.R. CR H.C. No. 04171)

The Hon. Presiding Judge
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