

FIRST DIVISION

[G.R. No. 132214, August 01, 2000]

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ZALDY CASINGAL, ACCUSED-APPELLANT.**

DECISION

PUNO, J.:

Must a man be brought behind bars when no one saw him pull the trigger of the carbine that felled his fellowman?

In Criminal Case No. SCC-2411, the accused-appellant was charged with the crime of Murder in an Information which states:

"That on or about May 8, 1995, in Barangay Sawat, municipality of Urbiztondo, province of Pangasinan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill, with treachery and evident premeditation, did then and there, willfully, unlawfully and feloniously shoot one Diosdado Palisoc with a U.S. Carbine cal. 30 inflicting upon him the following injuries:

- Gunshot wound on the left chest

POE: 0.5 cm., anterior shoulder

POX: 0.5 cm. 5th ICS-L paravertebral line

- Hypovolemic shock

which caused the death of said Diosdado Palisoc as a consequence, to the damage and prejudice of his heirs.

Contrary to Article 248 of the Revised Penal Code:"^[1]

In Criminal Case No. 2412, he was likewise charged with the crime of Illegal Possession of Firearm and Ammunition. The Information states:

"That on or about May 8, 1995, in Barangay Sawat, municipality of Urbiztondo, province of Pangasinan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there, willfully, unlawfully and feloniously have in his possession, custody and control one (1) U.S. Carbine caliber 30 with ammunition, without first securing the necessary permit and license to possess the same, which he used in the commission of the crime of Murder.

Contrary to P.D. 1866."^[2]

The accused pled not guilty to both crimes. Trial proceeded in due course.

The facts of the shooting incident are based mainly on the narration of prosecution witness Edgardo Mula Cruz. It appears that on the May 8, 1995 local elections, at about 8:15 p.m., Cruz was near the gate of Sawat Elementary School in Barangay Sawat, Urbiztondo, Pangasinan, waiting for Palisoc, the victim.^[3] Palisoc went home to get food or "baon" for Cruz and himself.^[4] Cruz was talking with his friends and facing the road when he saw Palisoc coming.^[5] He heard a gunshot, and when he turned his head towards its direction, he saw Palisoc facing the accused and falling to the ground. Carrying a U.S. carbine caliber .30, the accused ran towards the house of one Francisca Galpao.^[6] The area where the shooting incident took place was lighted by an electric bulb near the school gate. Cruz stood seven meters from both the victim and the accused whom he (Cruz) knew personally as they were neighbors.^[7] After the accused left the crime scene, Cruz sought assistance from the policemen assigned at the Sawat Elementary School for the elections.^[8] One of the policemen brought Palisoc to the Virgen Milagrosa Medical Hospital.^[9] Palisoc expired in the operating room, the gunshot wound on his chest causing his death.^[10] Cruz returned to the Sawat school to act as pollwatcher.^[11] The following day, he executed an affidavit narrating the shooting incident.^[12]

An investigation team was dispatched to the crime scene where some bloodstains, a fired bullet caliber .30 and fired caliber .30 cartridge were found.^[13] On May 9, 1995, the accused was arrested in the house of one Mimi Payaoan in Barangay Salavante, Urbiztondo, Pangasinan. On the same day, pursuant to a search warrant, one (1) carbine caliber .30 with serial number 5611988 with one long magazine and 30 rounds of live ammunition were found in the house of Francisca Galpao.^[14] The firearm with the magazine and ammunitions, as well as the fired bullet and cartridge were submitted for ballistic examination conducted by Police Inspector Pascual G. Mangal-ip.^[15]

Police Inspector Mangal-ip testified that the fired cartridge and slug found at the crime scene were the same with the cartridge and slug found in the house of Francisca Galpao and test-fired from the carbine submitted for ballistic examination. He concluded that the cartridge and slug found at the crime scene came from carbine caliber .30 with serial number 5611988.^[16] Chief Inspector Theresa Ann Bugayong Cid also testified that the paraffin test on the presence of gunpowder nitrates on the hands of the accused and on said carbine caliber .30 yielded positive results.^[17]

The version of the defense was presented through the sole testimony of the accused. He did not dispute that the victim was shot on the night of May 8, 1995 with the use of carbine caliber .30 with serial number 5611988.^[18] Nor did he deny his presence at the crime scene.^[19] He, however, pointed to another person as the triggerman.

The accused testified that on May 3, 1995, while in Baguio City, he received a letter from a certain Ernesto Payaoan, requesting him to go to Urbiztondo, Pangasinan to help in the local elections.^[20] The accused obliged and arrived in Urbiztondo on May 7, 1995. He spent the night in the house of Francisca Galpao.^[21] The next morning, Payaoan came and instructed the accused to clean carbine caliber .30 with serial number 5611988 and to fire it to test its condition. The accused did as instructed

and then gave the firearm back to Payaoan.^[22] He asked Payaoan why the gun was being tested and Payaoan revealed that he would kill Diosdado Palisoc. The accused tried to stop Payaoan as Palisoc was his second cousin, but to no avail.^[23]

On May 8, 1995, at about 7:30 in the evening, the accused and Payaoan went to Sawat Elementary School. Payaoan brought the carbine with him.^[24] When they saw Palisoc, Payaoan shot the victim and passed the firearm to the accused. He ordered the accused to run and bring the gun to the house of Francisca Galpao.^[25] His story was reduced to an affidavit which he executed about seven (7) months after the shooting incident or on December 20, 1995.^[26] On January 25, 1996, he executed another affidavit^[27] retracting his December 20, 1995 affidavit. On February 13, 1996, he made another affidavit^[28] recanting his second affidavit. The accused likewise claimed that while in detention in the Municipal Jail of Urbiztondo, Pangasinan, he confided to SPO1 Teofilo Garcia that it was Payaoan who killed Palisoc.^[29]

Payaoan testified as a rebuttal witness. He declared that on May 7 and 8, 1995, he was at the Regional PNP Command on standby detail because they were on red alert for election duties.^[30] At that time, he was a member of the General Services Group, PNP Recom 1, San Fernando, La Union. He buttressed his claim with a certification that on May 6-9, 1995, he was in the camp vicinity in San Fernando, La Union for election duties.^[31]

The prosecution likewise presented SPO1 Teofilo Garcia. He confirmed that the accused was a detention prisoner in the Municipal Jail of Urbiztondo, Pangasinan from May up to June 1995, but denied that the accused confided to him that it was Payaoan who shot Palisoc.^[32]

The trial court found the accused guilty beyond reasonable doubt of both Murder and Illegal Possession of Firearm and Ammunitions.^[33] Hence, this appeal with the lone assignment of error, viz:

"THE TRIAL COURT ERRED IN CONVICTING ACCUSED-APPELLANT OF MURDER AND VIOLATION OF P.D. 1866 DESPITE THE FACT THAT THE PROSECUTION FAILED TO SUBSTANTIATE HIS GUILT BEYOND REASONABLE DOUBT."

Prefatorily, we shall discuss the applicable law. On June 6, 1997, Republic Act 8294 amended P.D. 1866 which codified the laws on illegal possession of firearms. Among its amendments was that **if homicide or murder is committed with the use of an unlicensed firearm, such use shall be considered as a special aggravating circumstance.**^[34] The amendment meant: first, the use of an unlicensed firearm in the commission of homicide or murder shall not be treated as a separate offense, but as a special aggravating circumstance; second, as a single crime is committed (*i.e.*, homicide or murder with the aggravating circumstance of illegal possession of firearm), only one penalty shall be imposed on the accused.^[35]

In its Joint Decision, the trial court convicted the accused of murder and illegal possession of firearm and ammunitions. It stressed that R.A. 8294 cannot be given retroactive effect for it was enacted in 1997 while the crimes charged against the accused were committed in 1995. It held that to give R.A. 8294 retroactive effect

would be prejudicial to the accused and violative of Art. III, Sec. 22 of the 1987 Constitution which provides that, "(n)o ex-post facto law or bill of attainder shall be enacted."^[36]

We disagree. This Court has previously ruled that R.A. 8294 is favorable to the accused, and should thus be retroactively applied in the present case.^[37] It was thus error for the trial court to convict the accused of two separate offenses, *i.e.*, Murder and Illegal Possession of Firearm and Ammunitions. The crime for which the accused may be charged is murder, aggravated by illegal possession of firearm.

We now examine the evidence to determine the guilt of the accused. The accused makes much of the fact that no one saw him in the act of shooting. It is true that there was no eyewitness to the shooting of the victim, but the testimony of prosecution witness Cruz is sufficient to convict the accused as responsible for the death of Palisoc. He stated in his affidavit executed the day after the shooting incident, viz:

"Q. Do you know who shot Diosdado Palisoc?

A. Yes sir, Zaldy Casingal also resident of Barangay Salavante, Urbiztondo, Pangasinan.^[38]

He likewise testified as follows:

PROS. SORIANO:

Q.

When he fell down, what did you do?

A. I called up a police, sir.

Q. Before you called up a police, could you tell this Honorable Court the direction where the shot came from?

A. Yes, sir. When I turned my head where the shot came from, I saw Zaldy Casingal holding a carbine going to the house of Ating Galpaw (sic).

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Q. How were you able to recognize Zaldy Casingal whom you said was holding a carbine and proceeded (sic) to the house of Ating Galpaw (sic) after Diosdado Palisoc was shot?

A. There was an electric bulb near the gate, sir.

Q. How far were you to (sic) Zaldy Casingal when you saw him holding a firearm proceeding to the house of Ating Galpaw?

A. About seven (7) meters, sir.

Q. And how far were you to (sic) Diosdado Palisoc when he was shot?

A. The same, sir.^[39]

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Q. You mentioned Zaldy Casingal as a person whom you saw carrying a firearm/carbine after Diosdado Palisoc was shot, do you know this Zaldy Casingal personally?

A. Yes, sir.

Q. Why do you know him?

A. He is our neighbor, sir.

Q. If he is now in (sic) courtroom, will you please point to him?

A. (Witness pointing to a man with a mustache, and when he asked his name he answered Zaldy Casingal).^[40]

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ATTY. VALDEZ:

Q. You said that you did not actually see who shot Diosdado Palisoc, is that correct?

A. Yes, sir.^[41]

xxx

ATTY. VALDEZ:

Q. After you saw Diosdado Palisoc shot, did you look to the direction where the shot came from?

A. Yes, sir.

Q. And you saw a person running, is that correct?

xxx

A. There is sir, it was Zaldy Casingal bringing a gun.^[42]

ATTY. VALDEZ:

Q. When you said that you saw Zaldy Casingal bringing a gun, how far was he from the place where you were standing?

A. At about seven (7) meters, sir.

Q. You said that there was an electric bulb in the Sawat Elementary School, is that correct?

A. Yes, sir.

Q. And this electric bulb was installed inside the school room?

A. It is in (sic) the gate, sir.

Q. How far is this electric bulb, Mr. witness (sic)?

A. It is about four (4) meters, sir.