

## THIRD DIVISION

[ G.R. No. 121993, September 12, 1997 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
NELSON AGUNIAS ALIAS "BROD NEIL" AND MANUEL ARANETA  
ALIAS "WINGWING", ACCUSED. NELSON AGUNIAS ALIAS "BROD  
NEIL", ACCUSED-APPELLANT.**

### D E C I S I O N

**PANGANIBAN, J.:**

An accused may be convicted only of the crime charged in the information, or of that necessarily included therein. Where treachery or any other qualifying circumstance is not alleged in the information, the appellant cannot be found guilty of murder but only of homicide, even if the prosecution proves that the felon employed means, methods or forms which tend directly and specially to insure the commission of the crime without risk to himself arising from the defense that the victim might make. Such duly proven treachery can be appreciated only as a generic aggravating circumstance. The Court thus takes this occasion to remind prosecutors to use extreme care in formulating and wording informations to include all the elements of the crime charged.

#### Statement of the Case

The foregoing is the salient doctrinal feature of this Decision resolving the appeal of Nelson Agunias from his conviction for murder by the Regional Trial Court of Cebu.

In an Information dated February 9, 1994, the City Prosecutor of Danao City ("detailed at CPO, Cebu City per DOJ Order No. 60"), Casiano C. Vailoces, charged Accused-appellant Nelson Agunias alias "Brod Neil" and Accused Manuel Araneta alias "Wingwing" with murder allegedly committed as follows:<sup>[1]</sup>

That on or about the 23rd day of November, 1993 at about 11:20 o'clock (p.m.), in the City of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the said accused, conniving and confederating together and mutually helping each other, armed with a gun, with deliberate intent, with intent to kill, did then and there attack, assault and shot one Ferdinand Amor, hitting him on the different parts of his body thereby inflicting upon him several physical injuries, which caused the death of said Ferdinand Amor."

The case was raffled to Branch 14 of the Regional Trial Court<sup>[2]</sup> of Cebu City and docketed as Criminal Case No. CBU-36100. Arraigned on June 22, 1994, Appellant Nelson Agunias, assisted by counsel, pleaded not guilty to the charge.<sup>[3]</sup> Accused Manuel Araneta was and remains at large; hence, he was not arraigned. Thereafter,

trial on the merits ensued. On March 31, 1995, the trial court rendered the assailed Decision, the dispositive portion of which reads:<sup>[4]</sup>

“WHEREFORE, premises considered, the accused Nelson Agunias, alias ‘Brod Neil’ is hereby found guilty beyond reasonable doubt of the felony of murder as charged in the information, and neither mitigating or aggravating circumstances having attended the commission thereof, is hereby sentenced to thirty (30) years reclusion perpetua (Section 21, R.A. 7659). He is also condemned to pay unto the heirs the amount of P50,000.00 by way of death indemnity.

It appearing that the accused is a detained prisoner, and the Court having fixed a term for the penalty of reclusion perpetua meted out to him, he shall be credited in the service of his sentence with the time he has undergone preventive imprisonment in conformity with Article 29 of the Revised Penal Code, as amended.

Costs against the accused.”

Aggrieved by the Decision and the penalty imposed, Appellant Nelson Agunias appealed directly to this Court.

### **The Facts**

#### **The Version of the Prosecution**

The trial court summarized the evidence presented by the prosecution as follows: <sup>[5]</sup>

The State’s case against the accused Nelson Agunias alias ‘Brod Neil,’ is erected upon the testimonies of prosecution witnesses Aldrin Velayo, Ramil Arnaiz and Nestor Veloria,<sup>[6]</sup> Jr., friends or acquaintances to both the accused Nelson Agunias and the deceased Ferdinand Amor. Almost to a man these three prosecution witnesses testified that at past 11:00 o’ clock on the evening of November 23, 1993 they were at a store at T. Padilla Extension in this City, along with Nick Sapio, Allan Antifuna, the other accused Manuel ‘Wing-wing’ Araneta and the deceased Ferdinand Amor drinking Tanduay, when the accused Nelson ‘Brod Neil’ Agunias, passed by. Amor offered Agunias a shot of liquor but the latter refused, saying that he had not yet taken his supper. Moments later a shot rang out, the bullet hitting Amor at the back.

Aldrin Velayo testified that the shot came from the direction of the accused Nelson Agunias, whom he saw tucking into his waistline the fatal gun. Velayo also heard Amor telling him as he (Amor) slumped, ‘Bay, I was shot by Brod Neil.’

Ramil Arnaiz, for his part, testified that after the shot rang out, he turned his back and saw Agunias still aiming his gun at the back of the victim, who had his back turned toward his assailant when he was shot; that, as matter of fact, Agunias was only some two armslength away from the victim when Agunias shot him; that after shooting Amor, Agunias immediately tucked his gun into his waistline and walked away; that after

being hit Amor shouted for help, and said to him (Arnaiz): 'Bay, you run because I have been shot by Brod Neil.'

Upon the other hand, Nestor Veloria, Jr. declared that when the shot rang out, he saw Amor jerk or jump; that Amor told him to run because 'Brod Neil shot me'; and that he (Veloria) turned to see where the shot came from, and he saw Agunias still pointing the gun at Amor.

Aldrin Velayo, Nelson Veloria, Jr., Nick Sapio and Nelson Mahinay then brought the injured Ferdinand Amor to the Cebu Doctor's Hospital.

Dr. Miguel Mancao, physician surgeon, testified that it was he who examined Ferdinand Amor when the latter was brought to the Emergency Room of the Cebu Doctor's Hospital here in Cebu City, at about 11:45 o'clock in the evening of November 23, 1993; that at the time of Amor's examination, Amor had no blood pressure, and upon resuscitation, his diastolic rose to eighty over zero blood pressure, so he (Dr. Mancao) had to insert a tube and Amor's blood pressure rose to 100, for which reason Amor had to be brought to the operating room; that during the operation he found that a buller (sic) or slug had become embedded in the vertebra, fracturing Amor's rib, penetrating the left lower lung, and lacerating the left pulmonary vein; and that he was about to close the operation when Amor suffered cardiac arrest and died at the operating table, Dr. Mancao identified the death certificate he issued which had been marked in evidence as Exhibits B, B-1, B-2.

### **The Version of the Defense**

On the other hand, the Public Attorney's Office, as counsel for Appellant Agunias, narrated the defense's version of the facts thus:

The accused NELSON AGUNIAS testified in his own behalf and stated that he is 23 years old, single, a salesman of Golden Star and residing at Villa Gonzalo II, Cebu City. On November 23, 1993, at about 9:30 o'clock in the evening, he just came from the Salvation Army and was about to go home when he passed by two female friends namely Joy and Jeryl near the store located at the side of T. Padilla Extension. He had a chat with his two female friends. At the other side of the store, there were people drinking. One of them called him and the victim Ferdinand Amor offered him a glass of liquor. He declined the offer because he had not eaten supper yet. He proceeded home to take a bath in the communal bathroom before eating supper. While he was taking a bath, he heard a faint explosion. He ignored it and continued with his bath. About 3 to 5 minutes later, two of his barkadas namely Gerome and Talio passed by and informed him that somebody was shot at the store. Then he wrapped himself with a towel and proceeded to the store to check what happened. When he got out, he saw the victim being loaded into a panel by two others. Then he approached Jeryl and asked her what happened but she replied that she did not know. Wingwing Araneta was also there but the latter did not know also what happened. After that incident on November

23, 1993, he continued reporting to his usual work. It was only eight or nine days later that a policeman came asking around and informed him that he was the one who shot the victim. (TSN, December 12, 1994, pp. 2-7).

During cross-examination, he stated that the victim Ferdinand Amor was his friend and he knew some of the prosecution witnesses. (TSN, December 12, 1994, p. 8).

BRANDO RUFLO testified that the accused is a friend of the late Ferdinand Amor. The victim was a constant companion of the accused before the latter entered the Salvation Army. On November 23, 1993 at around 11:00 o'clock in the evening, he was at the store of his uncle, watching television. The store of his uncle was about ten meters away from the place where the victim was shot. While watching TV, the accused approached him and borrowed a bath soap. The latter proceeded to take a bath. Then, there was a commotion outside. According to the people outside, Ferdinand Amor was shot. He went out and informed the accused that his friend was shot. They learned that the victim was taken to the hospital so he returned inside the store and watched TV. Inside the store, he was able to talk to Wingwing Araneta and the storekeeper. Both of them told him that they did not see what happened. (TSN, December 13, 1994, pp. 2-5).

On cross-examination, he stated that he was surprised why Nelson Agunias was a suspect in this case. There were other groups who have grudges against Ferdinand, like the workers of Gothing, the group from Palma, Mcarthur and Villagonzalo. (TSN, December 13, 1994, p. 7).

### **The Issues**

In his brief, appellant imputes the following errors to the trial court: <sup>[7]</sup>

#### **"I**

The lower court erred in giving credence to the testimonies of prosecution witnesses and in disregarding the testimony of the accused-appellant.

#### **II**

The lower court erred in finding the Accused Nelson Agunias guilty beyond reasonable doubt of murder."

In substance, appellant assails the credibility of the prosecution witnesses. However, he fails to substantiate his second allegation that the court a quo erred in convicting him; he merely parrots the pronouncement of this Court that "the weakness of alibi of the accused could not strengthen the prosecution's case."<sup>[8]</sup> We will, nonetheless, discuss motu proprio an additional issue: whether treachery may be appreciated as a qualifying circumstance.

## **The Trial Court's Ruling**

Justifying appellant's conviction for murder, the trial court ruled:[9]

Undoubtedly, the crime committed by the accused under the facts proved is murder because the slaying was attended by treachery (alevosia), the victim having been shot from behind by the accused, and the accused having evidently employed or adopted that method of killing his victim which directly and specially insured its execution without risk to himself arising from the defense which the deceased might make or might have made. In fact, the victim, who as the evidence shows, was then drinking and having a good time with his friends and companions, was completely unaware that the accused had determined to assassinate or execute him at the time.

To be sure, the Court must reject the accused's disavowal or denial -- or what amounts to the same thing, his alibi -- of his authorship of the felony charged. For, as the evidence at bar conclusively shows, he was clearly identified by the three prosecution witnesses aforesaid as the assassin and executioner of the deceased. Furthermore, he failed to prove that it was physically impossible for him to be at or near the scene or situs of the crime when it was committed. If at all, he admitted that he was near or at the scene or situs of the crime at the time it was committed."

## **The Court's Ruling**

The trial court's Decision should be modified. While the said court correctly assessed the presence of treachery, appellant nonetheless cannot be convicted of murder because the information failed to allege such vital circumstance. Because of this error of the prosecution, appellant may be convicted only of homicide.

### **First Issue: Credibility of Prosecution Witnesses**

Appellant claims that the "marked contradictions and inconsistencies in the testimonies of the prosecution witnesses" show that the trial court "erred in giving weight and credence" to their testimonies.[10] He contends that the testimonies of prosecution witnesses are "conflicting and unreliable." [11] Prosecution Witness Aldrin Velayo allegedly narrated conflicting versions on the shooting of the victim. On direct examination, Velayo testified that he did not see the firearm used in the shooting. On cross-examination, however, he averred that he did see the said firearm that appellant subsequently tucked in his waist.[12] When confronted later with his affidavit of December 1993, in which he stated that he did not actually see appellant shoot the victim, he backtracked and explained that, after hearing the gunshot, he saw appellant tuck the gun in his waist.[13]

Appellant further points to an alleged conflict in the testimonies of the prosecution witnesses regarding "the place where accused went after he declined the offer of Ferdinand Amor for one shot of liquor." [14] According to Witness Aldrin Velayo, appellant went inside the store with an unknown companion. On the other hand,