

## SECOND DIVISION

[ G.R. No. 212848, August 17, 2016 ]

**ISIDRO COSME AND FERNAN COSME, PETITIONERS, VS. PEOPLE  
OF THE PHILIPPINES, RESPONDENT.**

### R E S O L U T I O N

**CARPIO, J.:**

#### The Case

This petition for review<sup>[1]</sup> assails the 29 November 2013 Decision<sup>[2]</sup> and the 5 June 2014 Resolution<sup>[3]</sup> of the Court of Appeals in CA-G.R. CR No. 33692. The Court of Appeals affirmed the 28 July 2010 Decision<sup>[4]</sup> of the Regional Trial Court of Tanauan City, Batangas, Branch 6, finding Isidro Cosme (Isidro), Fernan Cosme (Fernan), and Fred Cosme (Fred) guilty of homicide in Criminal Case No. 02-10-493, and finding Fernan guilty of attempted homicide in Criminal Case No. 02-10-494.

#### The Facts

Isidro, Fernan, and Fred were charged for the crimes of Homicide and Frustrated Homicide in two separate Informations, to wit:

#### Criminal Case No. 02-10-493

The undersigned Fourth Assistant Provincial Prosecutor accuses Isidro Cosme, Fernan Cosme and Fred Cosme of the crime of Homicide, defined and penalized under Article 249 of the Revised Penal Code, committed as follows:

That on or about the 17th day of June 2002, at about 7:30 o'clock in the evening, at Barangay Sampaloc, Municipality of Talisay, Province of Batangas, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, armed with unlicensed long and short firearms, conspiring and confederating together, acting in common accord and mutually helping one another, with intent to kill and without any justifiable cause, did then and there wilfully, unlawfully and feloniously attack, assault and shoot with the said firearms one Antonio Balinado y Almendras, thereby inflicting upon the latter gunshot wounds on the different parts of his body, which directly caused his death.

Contrary to law.<sup>[5]</sup>

#### Criminal Case No. 02-10-494

The undersigned Fourth Assistant Provincial Prosecutor accuses Isidro

Cosme, Fernan Cosme and Fred Cosme of the crime of Frustrated Homicide, defined and penalized under Article 249, in relation to Article 50 of the Revised Penal Code, committed as follows:

That on or about the 17th day of June 2002, at about 7:30 o'clock in the evening, at Barangay Sampaloc, Municipality of Talisay, Province of Batangas, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, armed with unlicensed long and short firearms, conspiring and confederating together, acting in common accord and mutually helping one another, with intent to kill and without any justifiable cause, did then and there wilfully, unlawfully and feloniously attack, assault and shoot with the said firearms one Pablito Punzalan y Cuerva, thereby inflicting upon the latter lacerated wound, left, occipital area, 3 cm., which required medical attendance and incapacitated him from performing his customary work for a period of fourteen to twenty one (14-21) days, the said accused having performed all the acts of execution which should have produced the crime of homicide as a consequence, but which nevertheless was not produced by reason of some cause independent of the will of the perpetrators, that is, because of the timely and able medical attendance rendered to the said Pablito C. Punzalan, which prevented his death.

Contrary to law.<sup>[6]</sup>

Upon arraignment, Isidro, Fernan, and Fred pleaded not guilty in both cases. Joint trial ensued thereafter.

During trial, it was found that the true name of the deceased Antonio Balinado is Florentino Balinado. The trial court, in its Order dated 28 October 2004,<sup>[7]</sup> granted the prosecution's Motion for Leave of Court to Amend the Information to state the real name of the victim, and the Amended Information inserted the true name of the victim as "Florentino Balinado y Almendras" alias "Antonio Balinado y Almendras alias Tony" (Antonio).

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

The prosecution presented six witnesses: Pablito Punzalan, Lope Punzalan, SPO2 Esmeraldo S. Manimtim, Dr. Teodoro Cabiscuelas, Pantaleon Balinado, and Anastacia Balinado.

Pablito Punzalan testified that on 17 June 2002, at around 4:00 p.m., he was at the house of Jose Tenorio, who was celebrating his birthday. He saw Antonio and Fernan arguing about politics and he heard Fernan warning Antonio: "*Tinoy, hindi ka na uumagahin.*" Fernan left at around 5:00 p.m. while Pablito and Antonio left at around 6:00 p.m.

While walking along the national highway, Pablito heard a shot. He met a child who told him to help Antonio. At the front yard of the Cosmes, he saw Isidro, Fred, Fernan, and Pantaleon Cosme boxing, kicking, and beating Antonio with their guns. Pablito shouted "*tama na?*" and introduced himself as a *barangay tanod*. When Antonio, who was already bloodied, embraced him, he told Antonio to run away because he might be killed. When Antonio ran away, Fernan shot Pablito, who was

later brought to the Daniel O. Mercado Medical Center for the treatment of a lacerated wound located at the left occipital area.

Lope Punzalan testified that on 17 June 2002, he was also at the house of Jose Tenorio. He remembered a shirtless Fernan, who appeared drunk when he arrived at the party. Later, during a heated debate on the elections, Fernan stood up and said "*Pumirmi kayo dyan.*" Fernan then pointed at Antonio and said "*Hindi ka na uumagahin pa.*" After the party, Lope instructed Antonio to go home. Later, while Lope was walking along the highway on his way home, he heard gunshots. When he looked towards the direction of the gunshots, he saw two persons running toward him and who told him that his cousin Antonio was shot. Lope proceeded to help and saw

Antonio with a gunshot wound on his back. He told Antonio to run away and they went separate ways. Later, he saw Pablito running while holding the back of his head which was bloodied. He then saw Antonio lying on the ground, and he instructed the people nearby to carry Antonio inside a jeep. While inside the jeep, Antonio told Lope that he was shot by the Cosmes. He did not ask further questions from Antonio since he was more concerned on bringing Antonio to the hospital.

According to Lope, he executed a sworn statement dated 18 June 2002 before PO3 Ernesto Serrano Cabrera, Jr. regarding the shooting incident but PO3 Cabrera lost the said statement.

SPO2 Esmeraldo S. Manimtim was ordered by their Chief of Police to conduct an investigation on the case. SPO2 Manimtim testified that at 10:00 p.m. on 17 June 2002, he asked Antonio why he was at the Daniel O. Mercado Medical Center. Antonio replied that he had gunshot wounds because he was shot by the father and son, Pame and Edong Cosme. SPO2 Manimtim learned from PO3 Cabrera that Pame Cosme is Pantaleon Cosme, while Edong Cosme is Isidro Cosme. When SPO2 Manimtim asked Antonio if his gunshot wound was fatal, Antonio merely replied that he was not feeling well. SPO2 Manimtim testified that at the time he took his statement, Antonio was already having a hard time speaking because of the gunshot wounds. SPO2 Manimtim further testified that he also received information that Antonio shot Pantaleon and Sonora Cosme who both sustained gunshot wounds.

Dr. Teodoro Cabiscuelas, a general surgeon at the Daniel O. Mercado Medical Center, testified that on 17 June 2002, Antonio was brought to the emergency room of the Daniel O. Mercado Medical Center. Antonio's vital signs of blood pressure of 60/80 palpatory indicated that he was losing a lot of blood. Antonio sustained gunshot wounds at the right thorax and lumbar area which were fatal, and at the right arm which was non-fatal. Antonio underwent extensive operation and his physical condition was declared unstable.

Dr. Cabiscuelas also treated Pablito Punzalan who sustained a non-fatal lacerated wound which would heal within 14 days or 2 to 3 weeks, provided no complication occurs. Dr. Cabiscuelas stated that the wound could have been caused by a bullet, but he could not really tell the real cause of Pablito's wound.

Pantaleon Balinado testified that on 17 June 2002 at around 7:00 to 7:30 p.m., his brother-in-law informed him that his father, Antonio, was shot. He immediately proceeded to the place of incident, where he was informed that his father was

already brought to the hospital. When he saw his father at the hospital, he asked him who shot him. His father answered that it was Fernan, Fred, Isidro, and Pantaleon (Cosme). Pantaleon testified that at that time, his father was in a bad condition and he could hardly talk.

Pantaleon Balinado further testified that they spent P124,603.37 for the hospital and doctor's fees and P143,662.89 for the medicines and burial expenses. At the time of his death, his father Antonio was earning around P20,000 tending a nursery. He hired a lawyer for the case and the agreed acceptance fee was P25,000, and P3,000 appearance fee for every hearing.

Anastacia Balinado, wife of Antonio, testified that on 17 June 2002, she was informed that Antonio was shot and she immediately ran to the place of incident. She saw Antonio already inside a jeep and about to be rushed to the hospital. She met her son Pantaleon and they went to the hospital, where she overheard Antonio telling Pantaleon that the ones who shot him were "*apat na mag-aamang Cosme*." Anastacia further testified that Antonio was confined at the hospital for three days, and died on 20 June 2002.

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

The defense presented seven witnesses: Pantaleon Cosme, Sonora Cosme, Isidro, Fernan, Dr. Raul Desipeda, PO3 Cabrera, and Police Inspector Donna Villa Huelgas.

Pantaleon Cosme, the son of Isidro and Socorro Cosme, testified that on 17 June 2002, at around 7:30 p.m., he and his siblings, Sonora and Fernan, were in front of their parents' house. They were talking about the altercation between Antonio and Fernan which happened at a birthday party when Antonio and Pablito Punzalan approached them. When Pantaleon Cosme asked them what was the problem, Antonio replied "*Patay kayo sa akin*." and then drew his gun and shot Pantaleon Cosme. Pantaleon Cosme fell to the ground and regained consciousness three days later at the hospital, where he learned that he sustained seven gunshot wounds. He was hospitalized for almost two weeks. Pantaleon Cosme further testified that Antonio also shot Sonora, who was hit at her side. At the time of the incident, his father Isidro was inside the house watching television.

Sonora Cosme testified that at around 7:30 p.m. on 17 June 2002, she was in front of their house with her brothers Pantaleon, Fred, and Fernan. Antonio and Pablito approached them and she saw Antonio shoot Pantaleon several times, causing him to fall to the ground. Sonora rushed to Pantaleon and while she was about to embrace him, Antonio shot her. She sustained a wound on her right buttock where the bullet entered and another on her left buttock which was the exit wound. She passed out and regained consciousness at the hospital. At the time of the attack, her father Isidro was inside the house. She stayed at the hospital for four days where she was interrogated by PO3 Cabrera.

Isidro testified that at around 7:30 p.m. on 17 June 2002, he was inside his house watching television when he heard six gunshots. Being used to gunshots in their neighborhood, he just ignored the incident. Five seconds later, someone knocked on the door, and when he opened it, Fernan went inside carrying an unconscious Sonora with blood oozing from her side. Isidro also saw his other son Pantaleon, lying bloodied on the ground less than 10 meters away. With the help of some