

EN BANC

[G.R. No. 184500, September 11, 2012]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
WENCESLAO NELMIDA @ "ESLAO," AND RICARDO AJOK @
"PORDOY" ACCUSED-APPELLANTS.**

D E C I S I O N

PEREZ, J.:

The subject of this present appeal is the Decision^[1] dated 18 June 2008 of the Court of Appeals in CA-G.R. HC No. 00246, affirming the Decision^[2] dated 30 September 2005 of the Regional Trial Court (RTC) of Kapatagan, Lanao del Norte, Branch 21, in Criminal Case No. 21-910, finding herein appellants Wenceslao Nelmida @ "Eslao" (Wenceslao) and Ricardo Ajok @ "Pordoy" (Ricardo) guilty beyond reasonable doubt of double murder with multiple frustrated murder and double attempted murder, thereby sentencing them to suffer the penalty of *reclusion perpetua*. Appellants were likewise ordered to indemnify, jointly and severally, the heirs of each of the deceased victims, *i.e.*, Police Officer 3 Hernando P. Dela Cruz (PO3 Dela Cruz) and Technical Sergeant Ramon Dacoco (T/Sgt. Dacoco), the amount of P50,000.00 each as moral damages and P50,000.00 each as civil indemnity for the death of each of the said victims. Similarly, appellants were directed to pay, jointly and severally, Mayor Johnny Tawan-tawan the amount of P50,000.00 for and as attorney's fees, as well as the costs of the suit.

Appellants and their co-accused Samuel Cutad @ "Sammy" (Samuel), Brigido Abais @ "Bidok" (Brigido), Pedro Serafico @ "Peter" (Pedro), Eduardo Bacong, Sr. (Eduardo, Sr.), Eduardo Bacong, Jr. @ "Junjun" (Eduardo, Jr.), Alejandro Abarquez (Alejandro), Ruben Bartolo @ "Yoyoy Bulhog" (Ruben), Arnel Espanola @ "Toto Ilongo" (Arnel), Alfredo Paninsuro @ "Tambok" (Alfredo), Opao Casinillo (Opao) and other John Does, were charged in an Amended Information^[3] dated 3 October 2001 with the crime of double murder with multiple frustrated murder and double attempted murder, the accusatory portion of which reads:

That on or about the 5th day of June 2001, at SAN MANUEL, Lala, Lanao del Norte, Philippines and within the jurisdiction of this Honorable Court, the above-named [appellants and their co-accused], conspiring, confederating and mutually helping one another, armed with assorted high-powered firearms and hand-grenade, did then and there willfully, unlawfully and feloniously, with treachery, evident premeditation (*sic*), taking advantage of their superiority in strength and in numbers, and with intent to kill, ambush, attack, assault and use personal violence upon the persons of the following, namely[:]

1. [PO3 Dela Cruz], [Philippine National Police (PNP)];
2. [T/Sgt. Dacoco], [Philippine Army (PA)];
3. [Private First Class (PFC)] Haron Angni, PA;
4. [PFC] Gador^[4] Tomanto, PA;
5. Juanito Ibunalo;
6. Mosanif^[5] Ameril;
7. Macasubar^[6] Tandayao;
8. Mayor Johnny Tawantawan;^[7] and
9. Jun Palanas

by then and there firing and shooting them with said high-powered firearms thereby inflicting upon the persons of [PO3 De la Cruz], [T/Sgt. Dacoco], [PFC] Haron Angni, [PFC] Ga[p]or Tomanto, Juanito Ibunalo, M[o]sani[p] Ameril and [Macasuba] Tandayao gunshot wounds which were the direct and immediate cause of the death of [PO3 De la Cruz and T/Sgt. Dacoco] and the serious wounding of said [PFC] Haron Angni, [PFC] Ga[p]or Tomanto, Juanito Ibunalo, Mosani[p] Ameril and [Macasuba] Tandayao that without the medical assistance would have caused their deaths, while Mayor Johnny Tawan[-]tawan and Jun Palanas were not hit.^[8]

When arraigned, appellants Wenceslao and Ricardo, assisted by their counsel *de parte*^[9] and counsel *de oficio*,^[10] respectively; and their co-accused Samuel, likewise assisted by counsel *de oficio*,^[11] all entered separate pleas of NOT GUILTY to the crime charged. The rest of the accused in this case, however, remained at large. Trial on the merits ensued thereafter.

Meanwhile, or on 21 January 2003, however, the prosecution filed a Motion to Discharge Accused [Samuel] To Be Utilized As State Witness,^[12] which the court *a quo* granted in an Order dated 12 February 2003.^[13] Also, upon motion of the prosecution, the court *a quo* issued another Order dated 17 March 2003,^[14] directing the release of Samuel from detention following his discharge as state witness.

As such, Samuel, together with 13 more witnesses, namely, Macasuba Tandayao (Macasuba), Mosanip Ameril (Mosanip), PFC Gapor Tomanto (PFC Tomanto), Merlina Dela Cruz (Merlina), Senior Police Inspector Renato Salazar (Senior P/Insp. Salazar), PFC Haron Angni (PFC Angni), Senior Police Officer 4 Raul Torres Medrano (SPO4 Medrano), Senior Police Officer 1 Ferdinand Suaring (SPO1 Suaring), Senior Police Officer 2 Ivan Mutia Evasco (SPO2 Evasco), Senior Police Officer 4 Emmie Subingsubing (SPO4 Subingsubing), Juanito Ibunalo (Juanito), Senior Police Officer 3 Tommy Umpa (SPO3 Umpa), and Mayor Johnny Tawantawan (Mayor Tawan-tawan), testified for the prosecution.

The factual milieu of this case as culled from the testimonies of the aforesaid prosecution witnesses is as follows:

On 5 June 2001, Mayor Tawan-tawan of Salvador, Lanao del Norte, together with his

security escorts composed of some members of the Philippine Army, Philippine National Police (PNP) and civilian aides, to wit: (1) T/Sgt. Dacoco; (2) PFC Angni; (3) PFC Tomanto; (4) PO3 Dela Cruz; (5) Juanito; (6) Mosanip; (7) Macasuba; and (8) a certain Jun, respectively, were in Tubod, Lanao del Norte. In the afternoon, the group went home to Salvador, Lanao del Norte, on board the yellow pick-up service vehicle of Mayor Tawan-tawan with Plate No. JRT 818 driven by Juanito. Sitting at the passenger seat of the aforesaid vehicle was Mayor Tawan-tawan while those at the back seat were Mosanip, Jun, and Macasuba, who was sitting immediately behind Juanito. Those seated on a wooden bench installed at the rear (open) portion of the said yellow pick-up service vehicle were PFC Tomanto, PFC Angni, PO3 Dela Cruz and T/Sgt. Dacoco. PFC Tomanto and PFC Angni were sitting beside each other facing the right side of the road while PO3 Dela Cruz and T/Sgt. Dacoco were both seated behind PFC Tomanto and PFC Angni facing the left side of the road.^[15]

At around 3:00 p.m. of the same day, appellants, together with their aforementioned co-accused, brought Samuel to a waiting shed in *Purok 2*, San Manuel, Lala, Lanao del Norte, the one located on the left side of the road going to Salvador, Lanao del Norte. Samuel was instructed by appellants and their co-accused to stay in the said waiting shed while they assembled themselves in a diamond position on both sides of the road, which is more or less five (5) meters away from the shed. Then, appellants and their coaccused surreptitiously waited for the vehicle of the group of Mayor Tawan-tawan.^[16]

A few minutes later, Samuel saw the yellow pick-up service vehicle of Mayor Tawan-tawan approaching towards the direction of Salvador, Lanao del Norte. The moment the yellow pick-up service vehicle of Mayor Tawantawan passed by the aforesaid waiting shed, appellants and their co-accused opened fire and rained bullets on the vehicle using high-powered firearms. Both Macasuba, who was sitting immediately behind the driver, and PFC Tomanto, who was then sitting on the rear (open) portion of the yellow pickup service vehicle, saw appellant Wenceslao on the right side of the road firing at them in a squatting position using an M-16 armalite rifle. Macasuba was also able to identify appellants Ricardo, Pedro, Eduardo, Sr., Eduardo, Jr., Brigido and Alfredo as among the ambushers. Mayor Tawantawan ordered Juanito to keep on driving to avoid greater casualties. The vehicle stopped upon reaching the army and Civilian Armed Forces Geographical Unit (CAFGU) detachment in Curva, Miagao, Salvador, Lanao del Norte. Mayor Tawan-tawan then asked assistance therefrom.^[17]

Immediately after the ambush, appellants and their co-accused ran towards the house of Samuel's aunt located, more or less, 10 meters away from the site of the ambush to get their bags and other stuff. The house of Samuel's aunt was the place where appellants and their co-accused stayed prior to the incident. Samuel followed appellants and their co-accused to the house of his aunt. Thereafter, appellants and their co-accused hurriedly ran towards *Barangay* Lindongan, Municipality of Baroy, Lanao del Norte.^[18]

On the occasion of the ambush, two security escorts of Mayor Tawantawan, namely, PO3 Dela Cruz and T/Sgt. Dacoco, died, while others suffered injuries. In particular, Macasuba was slightly hit on the head by shrapnel; Mosanip sustained injury on his shoulder that almost severed his left arm; PFC Tomanto was hit on the right and left sides of his body, on his left leg and knee; PFC Angni was hit on his left shoulder;

and Juanito was hit on his right point finger, right head and left hip. Mayor Tawan-tawan and Jun were not injured.^[19]

All the victims of the ambush, except Macasuba, were brought to Bontilao Country Clinic in Maranding, Lala, Lanao del Norte, and were later transferred to Mindanao Sanitarium and Hospital in Tibanga, Iligan City. PO3 Dela Cruz, however, died before reaching the hospital while T/Sgt. Dacoco died in the hospital. PFC Tomanto stayed at Mindanao Sanitarium and Hospital for 13 days before he was transferred to Camp Evangelista Hospital in Patag, Cagayan de Oro City, and then in a hospital in Manila and Quezon City. PFC Angni stayed for seven (7) days in Mindanao Sanitarium and Hospital before he was transferred to Camp Evangelista Hospital, where he was confined for one (1) month. PFC Angni was transferred to V. Luna Hospital in Quezon City and was confined therein for two (2) months.^[20]

On the other hand, Mayor Tawan-tawan, Macasuba and the members of the CAFGU went back to the site of the ambush but appellants and their co-accused were no longer there. Not long after, SPO4 Medrano, Chief of Police of Salvador Municipal Police Station, Salvador, Lanao del Norte, and his troops arrived. It was while inside the Salvador Municipal Police Station that SPO4 Medrano heard gunfire and he came to know that the group of Mayor Tawan-tawan was ambushed prompting him and his troops to go to the scene of the crime. Mayor Tawan-tawan informed SPO4 Medrano that appellant Wenceslao was one of those responsible for the ambush. SPO4 Medrano and his troops, then, conducted an investigation during which he noticed Samuel at the scene of the crime. Upon interrogation Samuel denied any involvement in the ambush. Even so, SPO4 Medrano still found Samuel suspicious, hence, he and his fellow police officers arrested him and turned him over to a certain SPO4 Micabalo, Chief of Police of Lala, Lanao del Norte. Samuel was then brought to Lala Municipal Jail in Lanao del Norte. Subsequently, SPO4 Medrano, together with the members of the CAFGU, PNP and the rest of the troops who were at the scene of the crime, found a trail of footprints believed to be from the culprits. They conducted a hot pursuit operation towards *Barangay* Lindongan, Municipality of Baroy, Lanao del Norte, where appellants and their co-accused were believed to have fled. They were able to recover an M-16 armalite rifle caliber 5.26 concealed near a *nipa* hut. SPO4 Medrano then sent a Spot Report and a follow-up report about the ambush. He did not, however, reveal the identity of appellant Wenceslao so that with a warrant of arrest, appellant Wenceslao could be arrested at the earliest possible time. SPO4 Medrano also informed the provincial headquarters about the incident through a radio message.^[21]

The following day, or on 6 June 2001, Samuel informed SPO1 Suaring, member of PNP Lala Municipal Police, Lala, Lanao del Norte, that there were electrical supplies and radio antenna in San Manuel, Lala, Lanao del Norte, left by the malefactors. SPO1 Suaring, together with Samuel, Senior P/Insp. Salazar, SPO4 Subingsubing and a certain SPO4 Sumaylo, proceeded to San Manuel, Lala, Lanao del Norte, where they found the materials near the National Irrigation Administration (NIA) canal, which is 30 meters away from the house of Samuel's aunt. These were photographed.^[22]

Later, SPO2 Evasco, who was assigned at Lala Police Station, received a call from *Barangay Kagawad* Renato Senahon (Brgy. *Kgwd.* Senahon) that a black backpack was found in Mount Curay-curay, Rebe, Lala, Lanao del Norte, which is two (2)

kilometers away from the highway. Immediately, SPO2 Evasco and *Brgy. Kgwd. Senahon* went to the location. Upon inspection, they recovered from the backpack an army camouflage with name cloth, one Garand pouch and one fragmentation grenade *cacao* type. SPO2 Evasco then brought these to the police station in Maranding, Lala, Lanao del Norte, and turned it over to Senior P/Insp. Salazar.^[23]

On 8 June 2001, Samuel executed his sworn statement identifying appellants and their co-accused as the persons responsible for the ambush of Mayor Tawan-tawan and his companions. Samuel was, thereafter, incarcerated at the Bureau of Jail Management and Penology (BJMP) in Tubod, Lanao del Norte.^[24]

On 29 August 2001, or more than two (2) months after the ambush, appellant Wenceslao was arrested while he was in Katipa, Lopez Jaena, Misamis Occidental. Appellant Ricardo, on the other hand, was arrested on 20 December 2001 while working in *Putting Bato* in Sapad, Lanao del Norte. It was Senior P/Insp. Salazar who effected the arrest of the appellants.^[25]

Appellants denied having any involvement in the ambush. Appellant Wenceslao presented as witnesses Armida Nelmidia (Armida), Jeffrey Paninsuro (Jeffrey), Luzviminda Apolinales (Luzviminda), Rudy Alegado (Rudy), Sergeant Teofanis Garsuta (Sgt. Garsuta) and Master Sergeant Pio Cudilla (M/Sgt. Cudilla). Appellant Ricardo, on the other hand, did not present any witness other than himself.

Appellant Wenceslao testified that on 5 June 2001, he was in their house with his family. At around 1:00 p.m., he went outside their house to clean the pigsty and feed the pigs. Then, at around 2:30 p.m., Jacob Pepito, Rudy and a certain Romy, who is a military personnel, arrived to get a copy of the election returns of the 15 May 2001 elections upon the orders of Tanny Pepito, a gubernatorial candidate. He told them that he has no copy of the returns. He then advised them to get it to Atty. Aldoni Umpa (Atty. Umpa) who has a copy. At that time, he, Jacob Pepito and Romy were outside the house while his wife and nieces were just eight (8) to 10 meters away from them. After 10 minutes, his visitors left.^[26] Suddenly, appellant Wenceslao heard gunfire coming from the direction of the house of Mayor Tawan-tawan. His nephew, Jeffrey, approached and informed him that Mayor Tawan-tawan and the latter's group were ambushed. After about one (1) or two (2) minutes, he again heard gunfire. This time the bullets were already hitting the roof and walls of their house. He then instructed Jeffrey, who is also a CAFGU member, to report the said incident and to ask help from the members of the Philippine Army stationed at Camp Allere, Salvador, Lanao del Norte.^[27] When Jeffrey left, appellant Wenceslao stayed at their house. He did not know where his wife and the rest of the women, who were in their house, went after the gunburst. After more or less 15 minutes, he walked barefooted and unarmed towards Camp Allere. There he saw M/Sgt. Cudilla and he informed the former regarding the incident happened in their house. Not long after, a certain Captain Esmeralda (Capt. Esmeralda), Commanding Officer of Bravo Company of the Philippine Army, arrived. He also approached and informed Capt. Esmeralda about the incident in their house. Capt. Esmeralda then ordered his men to board the *samba* and a six-by-six truck to fetch appellant Wenceslao's wife and relatives in Poblacion, Salvador, Lanao del Norte. A six-by-six truck returned to Camp Allere carrying appellant Wenceslao's wife and relatives.^[28]

On the evening of 5 June 2001, appellant Wenceslao, together with his wife and