

## THIRD DIVISION

[ G.R. No. 183567, January 19, 2009 ]

**PEOPLE OF THE PHILIPPINES, APPELLEE, VS. AVELINO DELA PEÑA, JR., APPELLANT.**

### DECISION

**NACHURA, J.:**

For the final review of the Court is the trial court's conviction of appellant Avelino dela Peña, Jr. for murder. In the September 21, 2007 Decision<sup>[1]</sup> of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 00133, the appellate court, on intermediate review, affirmed with modification in the award of damages, the August 1, 2001 Decision<sup>[2]</sup> of the Regional Trial Court (RTC) of Bugasong, Antique, Branch 64, in Criminal Case No. B-0234.

The antecedent facts and proceedings follow:

On March 8, 1997, at around 7:00 in the evening, the victim, the late Danilo M. Sareño, and his wife, Maria, illuminated by a torch and kerosene lamp,<sup>[3]</sup> were having dinner at their residence in Centro Binangbang, Barbaza, Antique.<sup>[4]</sup> In the course of the meal, Danilo stood up to get rice from the pot on the stove, one and a half meters away from the dining table.<sup>[5]</sup> Maria then momentarily saw Danilo's uncle and their neighbor, appellant Avelino, standing outside the house and behind the window (with bamboo grills) near the stove. In an instant, the appellant aimed and fired a gun at Danilo's back while he was scooping rice from the pot. Hysterical and shocked, Maria rushed to her husband, and shouted for help.<sup>[6]</sup> Haplessly, however, Danilo was already dead on arrival at the hospital.<sup>[7]</sup>

In the morning of the following day, March 9, the victim's body was autopsied by Dr. Divina M. Ruiz, Municipal Health Officer of Barbaza, Antique.<sup>[8]</sup> The cause of death was medically reported as "[c]ardiorespiratory arrest secondary to gunshot wound at the level of the 9<sup>th</sup> rib, back, right 1.5 inches from the midspinal column hitting the right ventricle of the heart and secondary to massive hemorrhage of the thoracic cavity due to rupture of the right ventricle of the heart."<sup>[9]</sup> Dr. Ruiz recovered the slug of the bullet at the said portion of the heart, and turned the same over to the authorities.<sup>[10]</sup> The gunshot wound had gunpowder indicating that the muzzle of the gun was near the body of the victim. There was no exit wound.<sup>[11]</sup>

The wife of the deceased formally lodged a complaint against the appellant on April 22, 1997.<sup>[12]</sup> In the October 27, 1997 Information<sup>[13]</sup> filed with the RTC of Bugasong, Antique, Branch 64, the appellant was charged as follows:

x x x x

The undersigned Assistant Provincial Prosecutor accuses Avelino dela Peña, Jr. of the crime of Murder, committed as follows:

That on or about the 8<sup>th</sup> day of March, 1997, in the Municipality of Barbaza, Province of Antique, Republic of the Philippines, and within the jurisdiction of this Honorable Court, the above-named accused being then armed with an illegally possessed firearm (caliber 38 revolver), with intent to kill and with treachery, did then and there, willfully, unlawfully and feloniously attack, assault and shoot with said caliber 38 revolver one Danilo Sareño thereby inflicting gunshot wound on his body which caused his instantaneous death.

Contrary to the provisions of Article 248 of the Revised Penal Code, as amended by R.A. 7659.

San Jose, Antique; October 27, 1997.<sup>[14]</sup>

When the warrant for his arrest was served, the appellant could not be found within the jurisdiction of the municipality. The police learned that he was in Manila at an unknown address.<sup>[15]</sup> On August 27, 1998, the appellant was finally apprehended<sup>[16]</sup> within the vicinity of St. Anthony's College in the municipality while he was driving a tricycle.<sup>[17]</sup>

During the arraignment on September 17, 1998, the appellant entered a plea of not guilty.<sup>[18]</sup> In his defense, he denied that he was the one who shot Danilo. He further claimed that on the date and time the shooting happened, he was at his best friend's (Eddie Limod's) house in another *barangay* four kilometers away from the scene of the crime, to ask for boat passes from his friend because he was leaving for Manila the following day. He left his friend's house at 11:00 in the evening. He later learned from his mother and siblings that it was his brother, Eldred, who shot Danilo. On the morning of March 9, 1997, he boarded the *M/V Romblon* bound for Manila.<sup>[19]</sup>

Eddie Limod corroborated appellant's alibi.<sup>[20]</sup> Gonzalo Sareño, the father of the victim, likewise testified in appellant's favor, and claimed that, after he heard the gunshot, he peeped through his window (his house was about 8 arm's length away from Danilo's house<sup>[21]</sup>) and saw Eldred running away from the crime scene.<sup>[22]</sup>

On August 1, 2001, the trial court rendered its Decision<sup>[23]</sup> finding the accused guilty beyond reasonable doubt of murder. The dispositive portion of the court's decision reads:

In view thereof, this Court finds the accused guilty beyond reasonable doubt of the crime of Murder punished under Article 248 of the Revised Penal Code and in the absence of any aggravating or mitigating circumstance he is hereby sentenced to Reclusion Perpetua and the accessories thereof.

Accused is ordered to pay the heirs of deceased Danilo Sareño the amount of P50,000.00 as indemnity for his death.

SO ORDERED.<sup>[24]</sup>

The appellant timely filed his Notice of Appeal<sup>[25]</sup> on December 19, 2001. On June 3, 2002, he was received at the New Bilibid Prison for commitment.<sup>[26]</sup> In the September 20, 2004 Resolution<sup>[27]</sup> of the Court in G.R. No. 152448, we transferred the case to the appellate court for appropriate action and disposition following our ruling in *People v. Mateo*.<sup>[28]</sup>

On September 21, 2007, the CA, as aforesaid, affirmed, with modification in the award of damages, the decision of the trial court.<sup>[29]</sup> The dispositive portion of the appellate court's decision reads:

WHEREFORE, premises considered, the assailed *Decision* of the RTC, 6<sup>th</sup> Judicial Region, Branch 64, Bugasong, Antique, in Criminal Case No. B-0234, convicting appellant, Avelino dela Peña, Jr., guilty beyond reasonable doubt of Murder, is hereby AFFIRMED with MODIFICATION, in that appellant is directed to pay the heirs of Danilo Sareño the amounts of P50,000.00 as moral damages and P25,000.00 as exemplary damages in addition to civil indemnity.

No costs.

SO ORDERED.<sup>[30]</sup>

The Court now finally reviews the trial and the appellate courts' uniform conviction of the appellant for murder.

We affirm. The appellant is guilty beyond reasonable doubt of the murder of Danilo M. Sareño.

In a criminal case, the prosecution must prove two things: (1) the fact of the crime; and (2) the fact that the accused is the perpetrator of the crime.<sup>[31]</sup> Here, there is no question on the existence of the first element, as in fact, the killing of Danilo is admitted by the parties. The appellant only puts in issue the second. The Court finds, however, that, in this case, the prosecution fulfilled its bounden duty to establish the identity of the assailant as the perpetrator of the crime.

It should be emphasized that the testimony of a single eyewitness, if positive and credible, is sufficient to support a conviction even in a charge of murder.<sup>[32]</sup> Relationship does not necessarily give rise to any presumption of bias or ulterior motive, nor does it impair the credibility of witnesses or tarnish their testimonies.<sup>[33]</sup>

In this case, the eyewitness account of Maria, the wife of the victim, was clear, sincere and truthful; and her identification of appellant Avelino as the assailant was positive and categorical, thus:

COURT:

Before you saw the accused you were eating already your supper?

A: I was eating and he stood up to scoop rice when the incident happened, Your Honor.

Q: How did you happen to see the accused?

A: He was just standing there, Your Honor and the distance is very near, Your Honor.

Q: You have seen the accused standing before your husband got rice from the rice pot?

A: Yes, he stood up and right after he stood up he shot him, Your Honor.

Q: In other words the accused is already outside of your grills while your husband was going to scoop rice?

A: Yes, he was waiting for my husband to stand up, Your Honor.

Q: What did you do or what did you say when you saw the accused standing beside the grills of your kitchen?

A: When my husband stood up to scoop rice he was just at the back standing and he immediately shot my husband, Your Honor.

Q: Now, that was the first time you saw the accused, or when was the first time you saw the accused? You said the accused was standing then your husband went to get rice and the accused shot your husband, was it the first time you saw the accused when he shot your husband?

A : Yes, Your Honor.

COURT:

And what was he doing when you first saw him? You stand up and demonstrate.

A: When my husband stood up to scoop rice he immediately put his hand in the window grill and shot my husband between the bamboo grills, Your Honor.

Q: What hand was holding the gun?

A: I did not notice what hand was holding the firearm but I noticed that the gun fired, Your Honor.

Q: Did his hand enter the bamboo grills that you are mentioning before?

A: No, only the gun, Your Honor.

Q: Now, how did you know that it was the accused who shot your husband when you said there was a bamboo grill?

A: Because there was a bright light coming from our neighbor's house, Your Honor.

Q: Inside your house there is also a light?

A: Yes, Your Honor.