

## THIRD DIVISION

[ G.R. No. 184173, March 13, 2009 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JUDITO MOLINA AND JOHN DOE, ACCUSED, JOSELITO TAGUDAR, ACCUSED-APPELLANT.**

### D E C I S I O N

**CHICO-NAZARIO, J.:**

For review is the Decision<sup>[1]</sup> dated 16 January 2008 of the Court of Appeals in CA-G.R. CR-H.C. No. 02327, which affirmed the Decision<sup>[2]</sup> dated 24 May 2006 of the Regional Trial Court (RTC) of Ilocos Norte, Laoag City, Branch 16, in Criminal Case Nos. 2003-011-16 to 2003-028-16, finding herein appellant Joselito Tagudar guilty beyond reasonable doubt of four counts of murder (Criminal Cases No. 2003-011-16 to 2003-014-16) and 14 counts of attempted murder (Criminal Cases No. 2003-015-16 to 2003-028-16). The appellant was sentenced to suffer the penalty of *reclusion perpetua* with all its accessory penalties for each count of murder and was ordered to pay the heirs of each victim the amount of P50,000.00 as civil indemnity. He was also sentenced to suffer an indeterminate penalty of 2 years and 4 months of *prision correccional*, as minimum, to 8 years and 1 day of *prision mayor*, as maximum, for each count of attempted murder and was ordered to pay each victim the amount of P20,000.00 as civil indemnity.

Appellant Joselito Tagudar, together with Judito Molina and a certain John Doe, both of whom remain-at-large, was charged before the RTC of Bangued, Abra, in 4 separate Informations for murder committed against Jansen Bersamin, Eric Pacurza, Rogee Montorio and Algie Pacurza; and 14 separate Informations for attempted murder committed against Ronald Ta-a, Jomar Pilor, Romel Pacurza, Jerome Bayubay, Gilbert Baruela, Crisanto Baruela, Roger Bersamin, Robert Baruela, Sammy Abundo, Albert Batalla, Carmelo Daganato, Filomeno Blosan, Allan Montorio and Eugene Philip Baruela.

The four separate Informations for murder<sup>[3]</sup> were docketed as Criminal Cases No. 2003-011-16 to No. 2003-014-16. Except for the names of the victims, the Informations in these four cases identically read:

"That on or about 11:30 to 12:00 midnight of [4 October 2002] at Barbarsic, Ba-ug, San Juan, Abra, Philippines and within the jurisdiction of this Honorable Court, the said accused, did then and there, in conspiracy with one another, with treachery, taking advantage of darkness and use of unlicensed firearms (unrecovered), unlawfully and feloniously shot [name], causing the latter's death, to the great damage and prejudice of the heirs of the victim."

The other 14 separate Informations for attempted murder<sup>[4]</sup> were docketed as Criminal Cases No. 2003-015-16 to No. 2003-028-16. Again, except for the names of the victims, the aforesaid Informations contained similar averments, to wit:

That on or about 11:30 to 12:00 midnight of [4 October 2002] at Barbarsic, Ba-ug, San Juan, Abra, Philippines and within the jurisdiction of this Honorable Court, the said accused, did then and there, in conspiracy with one another, with treachery, taking advantage of darkness and use of unlicensed firearms (unrecovered), unlawfully and feloniously shot [name], inflicting gunshot wounds thereby commencing the commission of murder by overt acts but do not perform all the acts of execution necessary to commit murder as a consequence for reasons other than their spontaneous desistance, to the damage and prejudice of the victim.

A Warrant of Arrest<sup>[5]</sup> dated 10 February 2003 was issued against the appellant and Judito Molina. However, only the appellant was arrested while Judito Molina remains-at-large.

Upon arraignment, the appellant, assisted by counsel *de parte*, pleaded NOT GUILTY to the crimes charged.

On 13 October 2003, this Court issued a Resolution<sup>[6]</sup> which granted appellant's Petition for Transfer of Venue. Thereupon, the complete records of the aforesaid cases were forwarded by the RTC of Bangued, Abra, to the Executive Judge of RTC Laoag, Ilocos Norte, and were raffled to Branch 16 thereof.

During the pre-trial conference,<sup>[7]</sup> the prosecution and the defense entered into the following stipulation of facts:

1. The identity of the [appellant] is admitted meaning that whenever the prosecution witnesses mention the name Joselito Tagudar they would be referring to the [appellant] Joselito Tagudar who was charged and arraigned under the information[s];
2. That on [4 October 2002] there was a wake at the Daganato house at Brgy. Barbarsic, Ba-ug, San Juan, Abra where the deceased Carmen Daganato was lying in state;
3. That many people adults and children were playing cards at the wake;
4. That on that night 4 people died, namely: Rog[e] Montorio, Eric Pacur[z]a, Jansen [Bersamin] and Algie Parcur[z]a;
5. The defense admit (sic) their respective certificates of death;
6. That during the shooting incident 14 other people were injured, namely: Ronald Ta[-]a, Crisanto Bar[u]ela, Robert Bar[u]ela, Carmelo Daganato, Jomar Pillor, Allan Montorio, Filomeno Bulosan, Jerome Bayubay, Philip Eugene Bar[u]ela, Gilbert Bar[u]ela,

Rommel Pacur[z]a, Sammy Abundo and [Roger] Bersamin;

7. That in the early morning of [5 October 2002] the [appellant] Joselito Tagudar went to visit some of the victims who were his relatives among them were Jomar Pillor and Allan Montorio;
8. That on [4 October 2002] the [appellant] Joselito Tagudar was at Bangued, Abra;
9. The existence of the following exhibits are admitted. Exhibit "1" which is a certification<sup>[8]</sup> issued by Police Inspector Lambert Alban Suerte regarding the holding of scout class at Camp Bado, Dangwa, La Trinidad, Benguet;
10. Exhibit "2" is the joint affidavit<sup>[9]</sup> of Police [Senior] Inspector Reguel Sta. Maria, PO1 Robert Banatao, PO1 Gregorio Pari[ñ]as, PO2 Engel Perez, PO1 June Beleno, PO1 Joel Semanero and PO1 Rogelio Federico;
11. Exhibit "3" is the joint affidavit<sup>[10]</sup> of Jerome Bersamin, Darwin Bersamin and Robinson Bersamin;
12. Exhibit "4" the joint affidavit<sup>[11]</sup> of PO3 [Florante] S[o]berano and PO1 Norman Labanen.<sup>[12]</sup>

Upon termination of the pre-trial proceedings, trial ensued.

The prosecution presented the victims, Allan Montorio and Jomar Pillor, as witnesses.

Allan Montorio testified that on 4 October 2002, between 11:00 p.m. and 12:00 midnight, he was at the wake of Carmen Daganato at the latter's house located in Barangay Barbarsic, Ba-ug, San Juan, Abra. He was then in front of the said house playing "*dado*" (a game of dice) with some people. Among those present were Algie Pacurza, Eric Pacurza, Jansen Bersamin, Rogee Montorio, Jomar Pillor, Crisanto Baruela, Carmelo Daganato, Jerome Bayubay and Roger Bersamin. While they were playing "*dado*," he heard a gunshot. He then crawled to a cemented bench to hide. After a gap of two to three seconds, the first gun report was followed by successive gun reports. He immediately stood up proceeding inside the house of Carmen Daganato. Allan Montorio then saw two persons shooting at their direction with an armalite and clad in black long-sleeves shirts, short pants and bonnets. However, despite the fact that the aforesaid persons were wearing bonnets, Allan Montorio still recognized them as the appellant and Judito Molina because the masks that they were wearing were like those of a ski-mask, which exposed their faces. Further, he was only three to four meters away from them. There was also a bright light coming from a 50-watt bulb positioned directly parallel above the gambling table.<sup>[13]</sup>

When the gunshots had stopped, he peeped from inside the house of Carmen Daganato and saw Eric Pacurza already sprawled, lying prostrate on the ground. Also, Algie Pacurza was not moving anymore. He too was not spared as he was also

hit by shrapnel on his left arm. Thereafter, Allan ran towards their house, which was around 100 meters away from the house of the deceased, and there he saw Jansen Bersamin lying at their door. He helped carry Jansen Bersamin's body to a vehicle to be brought to the hospital. Unfortunately, Jansen Bersamin died.<sup>[14]</sup>

Allan Montorio was also treated at the Abra Provincial Hospital and was given a medical certificate, since he was injured as a result of the aforesaid shooting incident. Afterwards, he was investigated by the police authorities at the San Juan, Abra, Police Station. He never revealed to the police authorities what he witnessed on the late evening of 4 October 2002 out of fear, as the appellant was an incumbent policeman of Bangued, Abra; and Judito Molina was a bodyguard of the Mayor of San, Juan, Abra.<sup>[15]</sup> It was only after the lapse of almost two months from the time of the shooting incident that he disclosed to the National Bureau of Investigation (NBI) what happened on that fateful night of 4 October 2002 and who were the perpetrators thereof.<sup>[16]</sup>

Another prosecution witness, Jomar Pillor, who was also at the wake of Carmen Daganato in the evening of 4 October 2002 between 11:00 p.m. and 12:00 midnight, similarly testified that he saw thereat Filomino Blosan, Eric Pacurza, Algie Pacurza, Rogee Montorio, Allan Montorio, Jerome Bayubay, Jansen Bersamin, Ronald Ta-a, Chris Baruela, Carmelo Daganato, Albert Batalla, Gilbert Baruela, Eugene Baruela and many others. While he was watching those who were playing "*dado*," he suddenly heard a burst of gunfire. Thereafter, he heard successive gun reports. He was standing when he heard the gunshots. Then, he saw two men coming from the western part (ricefields) of Carmen Daganato's house. These two men went to the cemented pavement and kept shooting their firearms at their direction. As he was only five meters away from these two men and the light coming from the fluorescent lamp placed above the gambling table illuminated the place, he was able to recognize them as the appellant and Judito Molina. The appellant and Judito Molina were wearing black sweaters, short pants and black bonnets with the faces exposed. He stated that he knew the appellant as a policeman assigned at Bangued, Abra, because they were from the same *barangay*. He had known the appellant since the age of reason. Likewise, he knew Judito Molina; he used to see him whenever their Mayor went to their place, as he was a bodyguard of the Mayor.<sup>[17]</sup>

When he saw the appellant and Judito Molina coming up to the cemented pavement while continuously firing their firearms at them, he immediately went inside Carmen Daganato's house to seek refuge, but he was hit on his thigh and shoulder. When the gunshots had stopped, he saw Algie Pacurza and Eric Pacurza dead. He also saw that those who were playing "*dado*" were injured. They were all brought to the provincial hospital where he stayed for a week. He heard that Rogee Montorio and Jansen Bersamin likewise died as a result of that shooting incident.<sup>[18]</sup>

He admitted before the court *a quo* that he was also investigated by the police authorities from the San Juan, Abra, Police Station while he was still at the hospital. But he refused to give them any information as regards the shooting incident because he was afraid, as the perpetrators were a policeman and a bodyguard of the Mayor. On 28 November 2002, when it was already the National Bureau of Investigation (NBI) who handled the investigation, he finally revealed what he witnessed on the night of the shooting incident. He also disclosed to the NBI the identities of the assailants.<sup>[19]</sup>

For its part, the defense presented the appellant, who interposed the defense of alibi; Julieta Pacurza, one of the daughters of Carmen Daganato; Ricky Lopera, a media practitioner; Police Inspector 3 (PO3) Dante Cardona, an Assistant Investigator at the San Juan, Abra, Police Station; and Robert Banatao, appellant's companion in going back from Camp Dangwa, La Trinidad, Benguet to Bangued, Abra.

The appellant narrated before the court *a quo* that on 4 October 2002, he and his fellow policemen were at Camp Dangwa, La Trinidad, Benguet, for their Annual General Inspection. On the same day, at around 5:00 o'clock in the afternoon, they all started to board an owner type jeep owned by PO1 Robert Banatao, as they would already go home to Bangued, Abra. It was already 11:45 p.m. of 4 October 2002 when they arrived in Bangued, Abra. Upon his arrival thereat, he received a text message from his brother that there was a massacre that transpired in Barbarsic, San Juan, Abra. Accordingly, he waited along the highway at Zone 7, Bangued, Abra, for the ambulance in which the victims were, as he expected that they would be transported by an ambulance to the hospital. His neighbors, however, told him that the ambulance had already passed by; thus, he proceeded to the hospital.<sup>[20]</sup>

When he arrived at the hospital, the other victims were already there so he helped in carrying them in. There he saw Allan Montorio and Jomar Pillor, who were also victims of the shooting incident. He was able to talk to them. He asked them if they were able to recognize those persons who were responsible for the shooting incident. Both Allan Montorio and Jomar Pillor replied in the negative and stated that it was dark and the assassins wore bonnets. The following day, he came to know that those who were killed in the shooting incident were Jansen Bersamin, Rogee Montorio, Algie Pacurza and another Pacurza whose first name he could not remember. He admitted that he knew his co-accused, Judito Molina, because the latter was employed with the Municipal Government of San Juan, Abra as a utility worker.<sup>[21]</sup>

Julieta Pacurza claimed that she was outside her mother's house serving coffee when the shooting incident happened. She stated that the moment she heard the gun reports, she witnessed those who were playing "*dado*" in the gambling table hide themselves. While the gun reports were being heard, she looked at the western part of her mother's house and did not see anything, as it was dark. She saw Allan Montorio hide himself at the cemented bench, while Jomar Pillor went upstairs to hide. After the shooting incident, she assisted those who were injured including her son, Carmelo Daganato, and brought them to the hospital. While she was at the hospital, she saw the appellant talking to Allan Montorio and Jomar Pillor.<sup>[22]</sup>

Ricky Lopera confirmed that he came to know of the massacre that happened in Barbarsic, San Juan, Abra, only in the early morning of 5 October 2002. Subsequently, he went to the Abra Provincial Hospital where the victims were brought and treated. He stated that he was able to interview one of the victims whose surname was Montorio. When he asked Montorio about the identities of the assailants, Montorio replied that he was not able to identify them as it was dark. He was also able to interview a parent of one of the victims, but the same answer was given to him.<sup>[23]</sup> On cross-examination, he professed that he was a friend of the