

THIRD DIVISION

[G.R. No. 157147, April 17, 2009]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
WILFREDO CAWALING, ACCUSED-APPELLANT.**

D E C I S I O N

NACHURA, J.:

We are confronted with conflicting accounts of the commission of a crime, a reverse *whodunit*^[1] rivaling the murder mysteries of Agatha Christie, in this review of the Court of Appeals' (CA's) conviction of accused Wilfredo Cawaling for murder and imposing on him the penalty of *reclusion perpetua*.^[2] However, unlike Agatha Christie, we are guided by the test of moral certainty in ascertaining the guilt of the accused.

This legal poser arose because, after the prosecution presented an eyewitness to the crime pointing to Cawaling as the perpetrator thereof, the defense offered the testimony of a person, initially charged with Cawaling in the same Information and who previously pled not guilty to the crime, confessing that it was he, and not Cawaling, who murdered the victim.

Even the two courts below us parleyed and rendered conflicting decisions. The Regional Trial Court (RTC) partially upheld the defense's version of the events, rejected the prosecution's eyewitness account of the murder and convicted Cawaling only as an accomplice to the offense of homicide. In stark contrast, the CA found the eyewitness' testimony credible and convicted Cawaling of murder.

The following are the long and arduous facts, seen and appreciated from two different perspectives by the lower courts.

Cawaling was charged with Murder in an Information which reads:

That on or about the 19th day of April, 1987, in sitio Hinulugan, barangay Agcogon, municipality of San Jose, province of Romblon, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill, conspired and confederated with Palti Umambong whose case was already dismissed after arraignment, did then and there by means of treachery, willfully, unlawfully and feloniously attack, assault and shot with a firearm the late ex-vice mayor Leodegario Capispisan, inflicting upon the latter serious and mortal gunshot wounds in different parts of his body which were the direct and immediately (sic) cause of his instantaneous death, thus causing damage and prejudice to his family.

Contrary to law.^[3]

The RTC laid out the facts based on the testimonies of the witnesses, to wit:

The forerunner of the case at bench was OD-275, for murder. It was filed on June 24, 1987.

The respondents were Palti Umambong and Wilfredo Cawaling.

The case against Umambong was dismissed on January 25, 1991 on the basis of an affidavit of desistance.

On February 4, 1991, this Court likewise dismissed the case against Cawaling upon the initiative of the prosecution.

Four (4) years thereafter, specifically on August 17, 1995, Cawaling was arrested, the case against him for murder having been revived and accordingly docketed as OD-852.

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EVIDENCE FOR THE PROSECUTION

The Prosecution presented three (3) witnesses.

Rommel Brigido, 29 years old, married and a resident of Busay, San Jose, Romblon, testified as follows:

That witness was with the accused Wilfredo and Palti in coming from the town of San Jose to barangay Busay.

That they passed by the house of Porferio Bina where they drank the locally fermented "tuba."

Later, he saw accused Wilfredo sitting on a bench under the "talisay" tree on the other side of the road.

Thereafter, he saw Leodegario, Gloria, Roberto and Leon passing by the road. When Leodegario got near the bench where Wilfredo was seated, the latter suddenly stood up and pointed his gun to Leodegario saying "who is brave," and two shots rang out and that there was a handkerchief covering the gun (t.s.n., p. 4, 8/23/95).

That the distance between Wilfredo and Leodegario was six (6) meters.

Witness, on direct examination, declared that although he was the companion of Wilfredo in coming from the town, he ran away and that he did not anymore know what happened to Leodegario (t.s.n., p. 5, supra).

On cross-examination, witness Rommel admitted that he executed and affixed his signature on an affidavit (Exh. "1" and "1-A") and that the same was executed only on July 27, 1995 narrating therein the incident that happened [in] April 1987.

Asked as to why witness took a long time before executing the affidavit, he commented that the case then was dismissed, and that Wilfredo is a dangerous man having recently killed his uncle Rexinol Brigido.

Rommel elaborated further that he was ten (10) meters away from Wilfredo and also of the same distance to Leodegario.

Rommel declared that Palti was on a stump of a chainsawed coconut tree and about six (6) meters away from Wilfredo (t.s.n., p. 13, August 23, 1995).

Palti did not [run] away (t.s.n., p. 15, supra).

When asked what was Wilfredo doing after the shooting of Leodegario, Rommel said that Wilfredo was going around, "pointing his gun and firing out, causing people to scamper away (t.s.n., p. 5, August 25, 1995).

On clarificatory questions of the Court, Rommel admitted that "it was only Wilfredo who pointed a gun towards Leodegario, although Palti was also holding a gun but pointed downward."

Gloria Valentin Capispisan, 34 years old, married and a resident of Busay, San Jose, Romblon, the second witness for the Prosecution testified thus -

She know(s) Wilfredo since childhood and that the victim Leodegario is her father-in-law.

At about six o'clock in the evening of April 19, 1987 she was near the house of Porferio after coming from the political caucus at the house of Romy Roldan who was then the OIC Mayor of San Jose, and a supporter of Natalio Beltran, Jr.

She was in the company of Themestocles Sulat, Jojo Sulat, Noe Antonio, Leon Barrientos, Roberto Capispisan, Leodegario Capispisan and two others, and that she is the wife of Roberto Capispisan.

While negotiating the way home she saw Wilfredo seated on a bench along the road about ten (10) meters away from her and demonstrated that Wilfredo's hands were on his lap, the left covered by a handkerchief and the right over the handkerchief.

Wilfredo, according to witness, suddenly stood up and pointed his gun towards Leodegario and "I heard two shots" with Leodegario falling to the ground on his back (t.s.n. p. 6, 8/24/95).

She attempted to approach Leodegario, her father-in-law but "she saw Palti with a gun" so she ran away (t.s.n. p. 8, supra).

On question of the private prosecutor whether she saw the gun while Wilfredo was sitting, she replied that she could not see it because it was covered by a handkerchief.

Asked as to the possible reasons why Wilfredo shot Leodegario, Gloria hinted that her father-in-law left the SAKADA and secondly, because of politics, the victim being the supporter of Natalio Beltran, Jr., while Wilfredo was for Manuel Martinez, candidates then for Congressmen.

Likewise, she testified that the case against Wilfredo relative to the incident of 1987 where Leodegario was the victim was dismissed because of settlement, the accused and Lilia Capispisan, the wife of the victim, are first cousins.

Queried as to whether the agreed settlement came about, Gloria said that the accused was able to produce only one-half of the monetary consideration, and that the condition that Wilfredo will not stay in San Jose, Romblon was not complied with because the latter even ran as barangay captain and that accused shot and killed the nephew of her father-in-law, Rexinol Brigido and even pointed the gun to her husband for two (2) times (t.s.n. p. 11, 8/24/95).

In the course of the cross-examination of Gloria she admitted having seen the affidavit of waiver and desistance (Exh. "2" for the defense).

Gloria testified that before the shooting, she "saw Palti Umambong having a gun" (t.s.n. p. 14, Ibid).

In the hearing of August 25, 1995, Gloria admitted that she saw Palti when Leodegario was already dead and that "he chased us."

After the shooting, Gloria testified that she saw Wilfredo [run] after her companions, firing a gun (t.s.n. p. 7, supra)

Elaborating further, Gloria testified that she "saw Palti who had a gun" and Palti chased her with a gun on his hand (t.s.n. p. 17, supra) and that Palti was near Leodegario lying on the ground, about three (3) meters.

On additional cross-examination of Gloria, she admitted that she executed an affidavit, regarding the incident on May 5, 1987 (Exh. "2" and "2-A" for the defense), while the signatures of the witnesses on the first and second pages were marked as Exhibit "2-B" and "2-C".

Relative to her affidavit, Gloria narrated in her sworn affidavit that "without any reason he just shot my father-in-law."

As to why she did not include the name Rommel in her affidavit, she said it was because Rommel was the companion of Wilfredo (t.s.n. p. 10, 1/12/98)

To establish the presence of Rommel during the incident, Gloria categorically stated that Rommel was at the side of Wilfredo.

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EVIDENCE FOR THE DEFENSE

Palti Umambong, 53 years old, married, farmer, and resident of Hinulogan, San Jose, Romblon narrated thus -

That it was him who shot and killed Leodegario.

On April 19, 1987, he was in the cockpit of San Jose, and that his fighting cock was pitted against that being handled by Leodegario.

He bet P100.00 and referee Pedro Venus declared his cock as the winner. He demanded his winning from the one listing the bets but was told that the bettor on the losing side did not pay, and when he demanded from Leodegario his winning bet, he was told by the latter that he will not pay because the decision of the referee was unfair (t.s.n., p. 6, 7/17/98).

Leodegario stood up and swung his right arm forward with a clenched fist and because of this Palti got angry prompting him to go home, but passed by the house of Porferio.

Near the house of Porferio he shot Leodegario because the latter did not pay him.

When he reached the road fronting that of Porferio, he stopped because he was called by Wilfredo who was seated on a bench beside the road and asked as to what happened in the cockpit and told the latter that he won except that he was not paid by Leodegario (t.s.n., pp. 11 and 12, supra).

Later on, as witness testified, Leodegario passed by near the house of Porferio and Palti accosted him and demanded payment, but Leodegario retreated two steps backward and was getting something from his waist as if drawing a gun and then he shot the victim twice resulting to Leodegario falling down on his back (t.s.n., pp. 3-4, supra).

After the shooting he walked towards his house, and told his wife that he'd done something wrong, that is, that he killed a person - a certain Leodegario and that he (witness) will go away. He looked for a sailboat and found one at Pinamihagan. He hired the sailboat and reached Aklan (t.s.n., pp. 16, 17, supra).

He stayed in Aklan for three years.

Palti, on redirect and recross examination, testified that he hid his gun before proceeding to the cockpit and retrieved the same on his way from the cockpit and before he met Wilfredo (t.s.n., p. 34, 8/24/98).

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Wilfredo Cawaling, 56 years old, married, a resident of Nabas, Aklan, and the accused in this case testified as follows: