

## EN BANC

[ G.R. No. 168050, September 19, 2008 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
BERNARDINO GAFFUD, JR., ACCUSED-APPELLANT.**

### DECISION

**PUNO, CJ.:**

For review before this Court is the Decision<sup>[1]</sup> of the Court of Appeals (CA) dated March 31, 2005 in CA-G.R. CR-HC No. 00060 finding the accused-appellant Bernardino Gaffud, Jr. guilty of the complex crime of double murder and sentencing him to death, affirming with modification the Decision<sup>[2]</sup> of the Regional Trial Court (RTC) dated August 28, 2002 in Criminal Case No. 1125.

The facts of this case were aptly summarized by the CA as follows:

Records show that accused-appellant Bernardino Gaffud, Jr., along with two John Does were indicted for Double Murder for the killing of Manuel Salvador and Analyn Salvador, under the following Information:

**"The undersigned 2<sup>nd</sup> Assistant Provincial Prosecutor accuses Bernardino Gaffud, Jr. and two (2) JOHN DOES of the crime of DOUBLE MURDER defined and penalized under Article 248 of the Revised Penal Code, committed as follows:**

**'That on or about 8:00 o'clock in the evening of May 10, 1994 at Sitio Biton, Barangay Wasid, Municipality of Nagtipunan, Province of Quirino, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused with intent to kill and motivated by long standing grudge, after conspiring, confederating and mutually helping one another, by means of fire, did then and there, willfully, unlawfully, and feloniously, shot and burn Manuel Salvador and Analyn Salvador which caused their instantaneous death.'**

**CONTRARY TO LAW." (p. 15, Records)**

It appears that Manuel Salvador and his daughter Analyn Salvador were killed when the house they were staying in located at Sitio Biton, Barangay Wasid, Nagtipunan, Quirino was burned down while they were inside. An eyewitness pointed to accused-appellant Bernardino Gaffud, Jr. as one of the arsonists.

Upon preliminary investigation, where appellant Gaffud, Jr. failed to

appear despite being subpoenaed to submit his counter-affidavit, Assistant Provincial Prosecutor Ferdinand Orias resolved that charges for double murder by means of fire be filed against herein appellant and two John Does, (p.14, Records).

When arraigned on June 6, 1995, accused-appellant Gaffud, Jr. entered a plea of Not Guilty, (p. 48, Records), paving the way for his trial.

The prosecution presented six (6) witnesses against appellant Gaffud, Jr., namely Dominga Salvador, common-law wife of Manuel Salvador and mother of Analyn Salvador, Orly Salvador, nephew of Manuel Salvador, Potado Ballang, Barangay Captain of Wasid, Nagtipunan, Quirino, Dan Dangpal, a neighbor of the deceased, SPO2 Dominador Tabal, the investigating police, and Dr. Teodomiro Hufana who conducted the autopsy on the deceased Manuel Salvador.

Evidence for the prosecution tended to prove that on the night of May 10, 1994, Orly Salvador was on his way to the house of his uncle Manuel Salvador to fetch the latter as they were going to attend a wedding at the nearby barangay hall. He suddenly heard two gunshots. Thereafter, he saw the house of his uncle burning. Because of the glow emanating therefrom, he saw three persons within the vicinity of the burning house. He saw them hurriedly leaving the place towards the direction of the Cagayan river. One of the three was holding a flashlight, whom he identified as appellant Gaffud, Jr. He could not identify the two other persons. After the house was burned, Orly went towards the barangay hall to see if his uncle Manuel Salvador was there, but he met Brangay Captain Potado Ballang who informed him that his uncle was not at the barangay hall. They then proceeded to the burned house, and found the charred remains of Manuel Salvador and Analyn Salvador. (TSN, October 10, 1995, pp. 3-8)

Barangay Captain Potado Ballang testified that he saw appellant Gaffud, Jr. on the fateful day at around 6:30 PM, along the riverbank, a few meters away from the house of Manuel Salvador. When Potado asked what he was doing there, Gaffud, Jr. said he was looking for his boat. However, Potado knew that the appellant did not own a boat. After a few minutes, Potado left to attend the wedding party being held at the barangay hall. (TSN, November 4, 1996, pp. 2-5)

Dan Dangpal's testimony was dispensed with, but the defense agreed to the nature of the testimony he would have given, which tended to show that sometime at about 8:00 PM on the fateful evening, while inside his house, he heard successive gunshots, and when he went out of his house, he saw the deceased's house burning about 200 meters away. He heard persons laughing and saw the light of a flashlight and persons moving away from the burning house. He could not recognize any of them. (TSN, February 24, 1997; Exhibit "D", p. 8, Records)

Dominga Salvador's testimony tended to show that the appellant Gaffud, Jr. was their neighbor. In the morning of May 10, 1994, she went to the house of the appellant to see him about her husband's share in the

construction of the barangay hall, which was contracted to the appellant. Gaffud, Jr. told her that he would go to her house that afternoon to introduce his in-law Balbino Bravo to her husband. Thereafter, she went home, and left again at around 11:00 AM, leaving behind her husband Manuel Salvador and their daughter Analyn. Later that night, she was at Natipunan, Quirino attending a seminar for "hilot", (TSN, July 4, 1995, pp. 3-15). In her *sinumpaang salaysay*, offered in evidence as Exhibit "A", Dominga also related that she had earlier filed a complaint in the barangay against the appellant and his brother for slaughtering her pig.

SPO2 Dominador Tabal was a police investigator who investigated the killing of Manuel and Analyn Salvador. Thereat, he saw two dead bodies hanging from a Melina tree. They were put there so that they would not be reached by the dogs. He saw that one of the victims had a fractured head, while the other had a wound on the side. Pictures of the victims including the scene of the incident were taken by them. Among those interviewed the appellant Gaffud, Jr. and his brother, (TSN, June 5, 1997, pp. 2-7).

Dr. Teodomiro Hufana's testimony was also dispensed with, (p. 127, Records) in view of the defense counsel's admission of the contents of his Autopsy Report on Manuel Salvador, (Exhibit "C"), which reads in pertinent part:

### **FINDINGS**

**-Cremated charcoaled, about 3 ft. long, stomach and intestine (Large) protruding from the abdomen.**

**-Presence of semi-burned rattan about 1 inch long about 1 cm. in diameter on the burned hand.**

**-Presence of a peculiar hole from the thoracic cavity directed downward to the body, probably gunshot wound.**

### **CAUSE OF DEATH:**

**-CREMATION (Burned)**

### **REMARKS: Cannot be identified if male or female**

For the appellant's defense, the defense presented the appellant himself. His defense of alibi was corroborated by his wife Juanita Gaffud and in-law Balbino Bravo.

Appellant denied the accusation leveled against him, and testified that the approximate time of the burning of the victims' house, he was at home, entertaining his in-laws, Balbino Bravo and Rufina Bravo, who was there for a visit. After eating dinner, he and Balbino Bravo talked. At around 7:00 to 8:00 PM, he and Balbino Bravo saw a blaze coming from the other side of the Cagayan River, about 50 to 80 meters away from the house of the Bravos. They did not mind the blaze, and instead went to sleep. The next morning, they heard news about somebody being burned, and because of this, he and Balbino Bravo hiked to the place of

the incident. That's where he found that his "pare" Manuel Salvador and his daughter were burned in their house. After seeing the dead bodies, appellant went home. He went back later, and was even designated by the Barangay Captain to guard the bodies of the deceased. Thereafter, he was forced to evacuate his family from Nagtipunan, because the Ilongot tribe was forcing him to testify against someone but he didn't want to. He was told that something might happen to his family if he didn't leave, (TSN, June 3, 2002).

The appellant's defense was corroborated on its material points by the testimony of his wife, Juanita Gaffud, and his in-law, Balbino Bravo, both of whom testified that on May 10, 1994, the accused was at his residence entertaining visiting Bravo spouses and stayed there the whole night, (TSN January 31, 2002 and March 18, 2002).

Juanita Gaffud also testified that during the pendency of the trial, she talked to Dominga Salvador about the settlement of the case and even offered a certain amount for the said purpose, (TSN, March 10, 2002, p. 12).<sup>[3]</sup>

After trial, the RTC rendered its Decision finding accused-appellant guilty of two (2) counts of murder, the dispositive portion of which reads:

WHEREFORE, in view of all the foregoing, the Court finds Bernardino Gaffud, Jr. GUILTY for two (2) counts of murder and hereby sentences him as follows, to wit:

- a) Death penalty - for the death of Manuel Salvador;
  - b) Another death penalty - for the death of Analyn Salvador;
  - c) To pay the legal heirs of the victims:
    - c- SEVENTY FIVE THOUSAND PESOS (P75,000.00) for each  
1) count or a total of ONE HUNDRED FIFTY THOUSAND PESOS (P150,000.00) as death indemnities;
    - c- FIFTY THOUSAND PESOS (P50,000.00) for each count or a  
2) total of ONE HUNDRED THOUSAND PESOS (P100,000.00) as moral damages;
    - c- TWENTY FIVE THOUSAND PESOS (P25,000) for each count  
3) or a total of FIFTY THOUSAND PESOS (P50,000.00) as exemplary damages;
    - c- TEN THOUSAND PESOS (P10,000.00) as nominal damages;  
4)
- and
- c- Costs.  
5)

X X X X

SO ORDERED.<sup>[4]</sup>

As the death penalty was imposed, the case was elevated to this Court for automatic review. In his Appellant's Brief,<sup>[5]</sup> accused-appellant argued that the RTC erred in: (i) failing to rule and resolve whether or not conspiracy existed, as the information charged him with conspiracy with two others in the commission of the crime; and (ii) convicting him despite the fact that conspiracy was not proven, and also despite the fact that there was no proof whatsoever as to what overt act he committed which would constitute the crime of murder.

The case was transferred to the CA for appropriate action and disposition per Resolution<sup>[6]</sup> of this Court dated August 24, 2004, in accordance with the ruling in **People v. Mateo**.<sup>[7]</sup> In disposing of the assigned errors, the CA held that the lack of discussion of conspiracy among accused-appellant and his anonymous co-accused in the decision of the RTC was not antithetic to his conviction for the crime of murder, since the charge that he was a principal performer in the killing of the victims was spelled out in the Information<sup>[8]</sup> filed against him.<sup>[9]</sup> Moreover, in the absence of conspiracy, each of the malefactors is liable only for the act committed by him.<sup>[10]</sup> As to the sufficiency of the evidence presented by the prosecution, the CA held that the circumstantial evidence in this case established accused-appellant's guilt beyond reasonable doubt.<sup>[11]</sup> Accordingly, the CA affirmed the Decision of the RTC, finding accused-appellant guilty of the complex crime of double murder, with the following modifications:

WHEREFORE, premises considered, the appeal is hereby **DISMISSED**, although the decision of the lower court is hereby **MODIFIED**, in that: The accused Bernardino Gaffud, Jr. is hereby found **GUILTY** of the complex crime of double murder, and is hereby sentenced to the supreme penalty of Death. He is also ordered to pay the legal heirs of the victims: (1) P100,000.00 or P50,000.00 for each victim, as civil indemnity for the death of the victims; (2) P100,000.00 or P50,000.00 for each victim, as moral damages; and (3) P10,000.00 as nominal damages plus costs.

**SO ORDERED.**<sup>[12]</sup>

Pursuant to Section 13, Rule 124 of the Rules of Court, as amended by A.M. No. 00-5-03-SC dated September 28, 2004, the case was elevated to this Court for review.

On the first assigned error, we concur with the CA that the failure to prove conspiracy in this case is not fatal.

The rule is that in the absence of evidence showing the direct participation of the accused in the commission of the crime, conspiracy must be established by clear and convincing evidence in order to convict the accused.<sup>[13]</sup> In the case at bar, however, we hold that the direct participation of accused-appellant in the killing of the victims, Manuel Salvador and Analyn Salvador, was established beyond doubt by the evidence of the prosecution. Hence, a finding of conspiracy in this instance is not essential for the conviction of accused-appellant.