

FIRST DIVISION

[G.R. No. 142051, February 24, 2004]

**PEOPLE OF THE PHILIPPINES, PETITIONER, VS. THE
HONORABLE COURT OF APPEALS (FOURTH DIVISION), CLAUDIO
FRANCISCO, JR. AND RUDY PACAO, RESPONDENTS.**

D E C I S I O N

YNARES-SANTIAGO, J.:

Assailed in this petition for *certiorari* under Rule 65 of the Rules of Court is the judgment of acquittal rendered by the Court of Appeals dated December 29, 1999 in CA-G.R. CR No. 16423, which reversed the Decision of the Regional Trial Court of Pili, Camarines Sur, Branch 32, convicting private respondents Claudio Francisco y Recto and Rudy Pacao y Parone of the crimes of homicide and attempted murder, respectively.

The essential and uncontroverted factual antecedents are as follows:

Claudio Francisco, Rudy Pacao, Capt. Rodolfo Malbarosa, Pfc. Catalino Bonganay, Sgt. Roberto Cana, Sgt. Virgilio Azucena, Sgt. Nathaniel Interino, Pat. David Valenciano, Pat. Cesar Quiambao, Joseph Pellas, and Gabriel Alosan were charged with Murder for the fatal shooting of one Marcial "Boyot" Azada in the following Information:

That on or about 5:00 o'clock in the afternoon of December 2, 1989, inside the Le Janni Restaurant, Municipality of Tigaon, Province of Camarines Sur, Philippines, and within the jurisdiction of this Honorable Court, the above named accused conniving, confederating and helping one another, moved by one common interest and design to kill, did then and there with Pat. Pacao, using his service pistol caliber .38 TM Squire Bingham with Serial No. 179896 issued to him by the Philippine National Police as such member of the Police force of Tigaon and accused Claudio "Danny" Francisco, Jr. likewise using a gun TM Smith and Wesson, caliber .38 revolver with Serial No. 11327, with treachery shot one Marcial "Boyot" Azada y Garza while the latter had both arms raised and his back was turned against accused Pat. Rudy Pacao a means employed and consciously adopted by both accused to ensure the death of said Marcial "Boyot" Azada without danger to their persons and thereafter with criminal intent and design to conceal his (Pacao) criminal act did knowingly and willfully altered, tampered and/or attempted to destroy his service pistol, while accused Francisco did knowingly and deliberately planted the gun he used in shooting his victim on the latter's (Azada) body, all of said acts of the herein accused were done with the sole aim and purpose to conceal and mislead the authorities as to the authorship of the crime.

That while accused Capt. Rodolfo Malbarosa, Pfc. Catalino Bonganay, Sgt. Roberto Cana, Sgt. Virgilio Azucena, Sgt. Nathaniel Interino, Pat. David Valenciano, Pat. Cesar Quiambao, Joseph Pellas, and Gabriel Alosan are being impleaded in the instant case as accessories under Art. 19 of the Revised Penal Code with grave abuse of their authority as peace officers, with full knowledge of the criminal act of both Francisco and Pat. Pacao, willfully, actively and knowingly cooperated, conspired and confederated with accused Francisco and Pat. Pacao to conceal the crime and the criminal thru the concerted efforts of all the herein accused by making it appear thru their false narration of facts in the Tigaon Police Blotter and in their individual sworn statement and/or narration of facts given before the agent of the National Bureau of Investigation, all of these acts are contrary to law.

That due to the untimely death of the deceased Marcial "Boyet" Azada, the heirs of said deceased suffered damages in the amount of no less than P500,000.00, Philippine Currency, and have incurred expenses necessary and incidental to this case in the amount of P200,000.00.

ACTS CONTRARY TO LAW.

All the accused pleaded not guilty to the crime charged. On demurrer to evidence, the trial court dismissed the case against Pfc. Bonganay, Sgt. Cana, Sgt. Azucena, Sgt. Interino, Pat. Valenciano and Pat. Quiambao. Upon the death of Capt. Malbarosa, the case against him was likewise dismissed. Trial on the merits ensued.

The facts as found by the trial court:

At about 5:30 o'clock of the afternoon of 2 December 1989, at the Le Janni Restaurant in the Poblacion of Tigaon, Camarines Sur, Azada was seated at the eastern end of table 2 of the Le Janni Restaurant; to his right was Francisco, Jr.; to the right of Francisco, Jr. was Gabriel Alosan; directly across Francisco, Jr. was seated Joseph Pellas, who was to the left of Azada; while Francisco, Jr. and Azada were having a discussion, Alfredo Alarcon tapped Azada to stop the discussion, but the latter told Alarcon not to mind him, prompting Alarcon to withdraw to a seat nearby; Patrolman Bonganay approached the group of Azada, and directing his words to Azada, asked the latter to turn over his gun, simultaneously trying to hold the gun of Azada tucked to his waist; Azada parried the grabbing hand of Bonganay, at first refusing to surrender it, but Azada suddenly drew his .38 caliber Smith and Wesson revolver from his waist, stood up, and placed the revolver on the table; Francisco, Jr. took the revolver and pointed it to Azada, who raised both his arms; with both hands extended, holding the .38 revolver, Francisco, Jr. while face to face with Azada, fired a shot, which entered just below the left external auditory meatus, directed backwards, upwards and laterally, fracturing comminutely the upper maxilla; the slug of that first shot was recovered embedded in the sphenoid bone, right and was terribly deformed (Exh. C-21); several more shots were fired by Francisco, Jr., but they did not find their marks on Azada, he slowly fell backwards, grazing with his hand Bonganay, but finally he fell back on a chair and landed on the cemented floor of the restaurant; meanwhile, after the first shot was

fired by Francisco, Jr., accused Rudy Pacao fired three shots in the direction of Azada, one of which found its mark 23 centimeters from the left elbow, upper third arm, left directed forward, producing an exit reentry wound just below the apex of the axilla, left, where a well-formed slug was recovered; at the time Pacao fired his shots, he was about four meters from Azada, and to the latter's left; as Francisco continued firing after the first shot, he was pushed by Bonganay; Francisco, Jr. then threw the .38 caliber revolver under the table near where Azada lay sprawled on his back, with blood oozing from his mouth and ears; Francisco, Jr. after the shooting stopped was cowering, bended with both his hands on his head, and when confronted by Pacao, managed to utter the words, "why did it have to happen"; Pacao after the shooting stopped, frisked Pellas and Francisco, Jr. from whom no guns were found.

After Azada fell on his back, Alarcon approached him and cradled him, but he finally left the dying Azada when he heard a voice from behind him telling him to leave Azada alone as he was already dead, and warning Alarcon he might be involved; Francisco, Jr. left when he was fetched by his sister, but Pacao and the policemen remained behind, closing the restaurant, to the extent of preventing the widow of Azada from entering it; a little while later, Capt. Malbarosa arrived; he recovered the .38 caliber revolver and the improvised shotgun, .45 caliber type under the table near where Azada lay.

At the time Azada was shot, he still had his .45 type shotgun tucked to his waist, and he could have drawn it to protect himself from the gun pointed at him by Francisco, Jr.

On December 3, 1989, Azada was autopsied at the funeral parlor by Dr. Alnor de la Rosa, then medico-legal officer of NBI, Bicol, the result of which is Exh. C-21; during the time Azada lay in state, the accused Francisco, Jr., Pellas and Alosan attended the wake and the latter two even attended the funeral.

Marcial Azada is survived by his widow, Noela David vda. de Azada, and three minor children, and by his father, Victor; his widow felt sad and suffered serious anxiety for the future of her children, who are now deprived of support of their father; Victor Azada felt sad and suffered a great feeling of loss at the death of his only son, and is now without the helping hand of Marcial; he also paid for the funeral expenses for his son, is supporting his son's family at the rate of P5,000.00 a month, and has spent for his lawyers in the prosecution of this case to the tune of not less than P75,000.00, exclusive of appearance fees of P1,000.00 for Atty. Rosales and Teoxon.^[1]

In a decision dated February 7, 1994, the court *a quo* exonerated accused Pellas and Alosan and convicted respondents Francisco Jr. and Pacao for homicide and attempted murder, respectively, the decretal portion of which reads:^[2]

IN VIEW OF THE FOREGOING CONSIDERATIONS, judgment is hereby rendered:

1. Acquitting Joseph Pellas and Gabriel Alosan; consequently, their bail bonds are hereby cancelled; their counterclaims are dismissed;

2. Finding the accused Claudio Francisco Jr. y Recto, also known as Danilo and Danny Francisco, guilty beyond reasonable doubt of the crime of Homicide, defined and penalized under Art. 249 of the Revised Penal Code, and sentences him to suffer imprisonment, applying the Indeterminate Sentence Law, and crediting him with the mitigating circumstance of voluntary surrender, ranging from Eight (8) years and One (1) day of *prision mayor*, as minimum, to Twelve (12) years, Ten (10) months, and Twenty (20) days of *reclusion temporal*, as maximum, with all the accessories of the law; to indemnify the heirs of Marcial Azada the sum of Fifty thousand (P50,000.00) Pesos, as indemnity for his death, actual damages of not less than P100,000.00, moral damages of P100,000.00, and to pay proportionate costs;

3. Finding the accused Rudy Pacao y Parone, guilty beyond reasonable doubt of the crime of Attempted Murder, defined and penalized under Art. 248 of the Revised Penal code, in relation to Art. 6 thereof, and sentences him to suffer imprisonment, applying the Indeterminate Sentence Law, ranging from Four (4) years, Two (2) months and One (1) day of *prision correccional*, as minimum, to Six (6) years, One (1) month and Eleven days of *prision mayor*, as maximum, with all the accessories of the law, and to pay proportionate costs.

The accused Claudio Francisco Jr., and Rudy Pacao, are credited in full for their preventive detention.

SO ORDERED.

On appeal, the trial court's decision was reversed and respondents Francisco and Pacao were acquitted of the crime charged.^[3]

In justifying its decision, the Court of Appeals relied on the following circumstances as indicative of the innocence of respondent Francisco, to wit: (1) the sitting position of respondent Francisco, who was seated at the right side of Azada, made it impossible for him to have fired the gun taking into account the points of entry of the bullets; (2) the inability of the experts to identify the bullet and the source from which firearm it was fired, it was unjust to conclude that the same came from the gun of the deceased which the prosecution alleged to have been fired by respondent Francisco; (3) the paraffin test conducted on respondent Francisco registered negative of gunpowder burns.^[4]

In absolving respondent Pacao of any culpability, the Court of Appeals found that Azada, instead of surrendering peacefully to the apprehending police officers, resisted arrest and fired his gun towards their direction. Respondent Pacao was therefore acting in self-defense and in fulfillment of his duty as a police officer when he returned fire at the victim.

The prosecution, represented by the Office of the Solicitor General, vehemently