

## THIRD DIVISION

[ G.R. No. 138534, March 17, 2004 ]

**PEOPLE OF THE PHILIPPINES, APPELLEE, VS. SPO1 VIRGILIO G. BRECINIO, APPELLANT.**

### D E C I S I O N

**CORONA, J.:**

This is an appeal from the decision<sup>[1]</sup> dated October 15, 1998, of the Regional Trial Court of Santa Cruz, Laguna, Branch 28, in Criminal Case No. SC-6476, finding herein appellant, SPO1 Virgilio G. Brecinio, guilty beyond reasonable doubt of the crime of murder for the killing of one Alberto Pagtananan.

Appellant Brecinio was originally charged with homicide thru reckless imprudence in the Municipal Trial Court of Pagsanjan, Laguna by the PNP Chief of Police of Pagsanjan, Laguna.<sup>[2]</sup> However, upon intervention of the National Bureau of Investigation (NBI) and after a re-investigation conducted by the Office of the Laguna Provincial Prosecutor, the charge against the appellant was upgraded to murder.<sup>[3]</sup>

That on the 30<sup>th</sup> day of June 1996, more or less 6:00 o'clock in the evening, inside the Municipal Jail, Municipality of Pagsanjan, Province of Laguna, and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill, with treachery and evident premeditation, while conveniently armed with a service firearm Colt Caliber .45 with SN 531333, did then and there willfully, unlawfully and feloniously shoot ALBERTO PAGTANANAN, a jail inmate, who was then caught unaware and was hit on the upper quadrant medical clavicular line, resulting in his instantaneous death, to the damage and prejudice of his surviving heirs.

That the crime was committed with the qualifying circumstances of treachery and evident premeditation.

Contrary to law.

Arraigned on May 21, 1997, appellant pleaded not guilty to the charge.<sup>[4]</sup>

The version of the prosecution revolved basically around the testimonies of the two eyewitnesses, Robinson Arbilo<sup>[5]</sup> and Filomeno Mapalad, Jr.,<sup>[6]</sup> with supplementary testimonies from Dr. Levy Abad,<sup>[7]</sup> the municipal health officer of Pagsanjan, Laguna, Dr. Arsenio de Roma<sup>[8]</sup> of the Laguna Provincial Hospital who examined the victim and declared him dead on arrival, Atty. Rogelio G. Munar<sup>[9]</sup> of the NBI and Elpidia Pagtananan-Barcelona,<sup>[10]</sup> the sister of the victim.

Robinson Arbilo testified that, at around 5:00 p.m., on June 30, 1996, he was with inmates Sammy Bolanos, Rafael Morales, Edwin Maceda, Filomeno Mapalad, Jr. and victim Alberto Pagtananan inside the Pagsanjan municipal jail, cell no. 1, when appellant SPO1 Virgilio Brecinio, who was drunk, arrived. Appellant entered their cell and asked for their names, and the reasons for their detention. After answering, each of them received a blow in the stomach from the appellant for no apparent reason. Thereafter, appellant ordered them to bring out all their belongings from their cell. While doing so, they were hit with whatever object the former could get hold of.

Appellant proceeded to the comfort room and, as he emerged therefrom, he saw the victim Alberto Pagtananan also coming out. Appellant confronted the victim and asked him where he came from. The victim answered that he had just urinated. Apparently not believing him, appellant accused the victim of "hiding" and "making a fool of him." The victim innocently replied "*hindi naman po.*" Irritated by the answer, appellant berated the victim and when the latter looked at him, he asked, "*Ba't ang sama mong tumingin?*" The victim did not reply. Appellant punched the victim in the stomach but still the latter said nothing.

Appellant pulled out his .45 caliber pistol tucked on his right waist and fired it twice in succession. The first shot was directed upward; the second downward. The inmates inside the cell were all cowering in fear and were huddled together in one corner of the bed, covering their ears. Witness Arbilo who was merely one-and-a-half meters in front of the appellant then saw the latter aim his gun at the victim and fire the third shot, hitting the victim in the stomach. Seeing the victim lying prostrate on the ground, the inmates lifted and laid him on the bed. At that juncture, appellant, who was standing in front of the inmates, reholstered his gun on his waist and ordered them to get water for the victim. SPO1 Bayani Montessur then arrived and ordered the victim to be brought to a nearby hospital but the latter was declared dead on arrival.

Filomeno Mapalad, Jr. corroborated the testimony of Robinson Arbilo. From a distance of only three meters behind the appellant, he saw the latter fire the third shot at the victim. He also declared that there was no truth to the statement in his *Sinumpaang Salaysay* dated June 30, 1996 that the appellant slipped on the floor, causing the gun to fall and fire accidentally, hitting Pagtananan in the stomach. SPO1 Montessur, a colleague of appellant, prepared the said affidavit and, after getting his name and address, forced him to sign it. He signed the affidavit out of fear of the appellant who threatened to kill him if he did not cooperate.

After his release from detention, Mapalad went to the NBI and gave his statement on what actually transpired.

Dr. Levy Abad, municipal health officer of Pagsanjan, Laguna, conducted the post-mortem examination on the body of the victim. He found that the victim sustained one gunshot wound in the stomach and that the cause of death was shock and severe internal hemorrhage.

Atty. Rogelio G. Munar, Ballistician V and Chief of the Firearm Investigation Division of the NBI, testified on Report No. 411-10-796 submitted by his subordinate, Ireneo Ordiano, who could not testify in court as he had suffered a mild stroke and still encountered difficulty in speaking. He testified on the result of the ballistics

examination which revealed that the slug recovered from the body of the victim Alberto Pagtananan was a .45 caliber copper-jacketed bullet.

Elpidia P. Barcelona, the sister of the victim, testified on the expenses incurred by their family as a result of her brother's death. According to her, the family spent P25,000 for the funeral services and food served during the wake, P10,000 for the coffin and P50,000 for transportation expenses in going to the NBI, plus other expenses.

Contrary to the prosecution's version, appellant claimed that the shooting was accidental. He declared that he had just gone out of the comfort room and was about to tuck his .45 caliber pistol in its holster on his waist when he slipped on the wet floor, causing the gun to drop and fire. After picking up the gun, Eric Garcia, an inmate, called his attention to the fact that one of the inmates had been hit. He immediately went to the detention cell and saw the victim, Alberto Pagtananan, lying down with a wound in his stomach. He called Filomeno Mapalad Jr. and ordered him to bring the victim to the hospital. He was not able to go with the group as he was immediately placed under arrest.

On cross-examination, appellant testified that his pistol was in good condition and was always loaded and cocked. Appellant also testified that when his gun fired, it hit the cement wall. Appellant further testified that, in order to assuage the feelings of the victim's relatives, his wife sent a cavan of rice, coffee and sugar. They also tried to amicably settle the case with the family of the victim but were turned down.<sup>[11]</sup>

NBI forensic chemist Emilia Andro-Rosaldez was also presented by the defense to testify on the result of the paraffin examination conducted on the appellant on July 2, 1996, two days after the alleged shooting incident. She testified that it was Mrs. Gemma Orbeta who made the paraffin cast on the appellant and her only participation was the examination of the paraffin cast taken from the appellant. According to her, there are four factors that can affect the presence of gun powder residue in the hands of a person who fires a gun, namely, the length of the barrel of the gun, the wind velocity, the direction of the shot(s) and the type and caliber of ammunition. She also declared that the application of paraffin wax to make the paraffin cast can remove gunpowder residue. She did not know whether paraffin wax had been applied on the hands of the appellant before the paraffin cast was made.<sup>[12]</sup>

The trial court, after weighing the evidence presented by both sides, gave no credence to the version of the appellant. On October 15, 1998, a decision was rendered, convicting appellant of the crime of murder. The dispositive portion read:

WHEREFORE, IN THE LIGHT OF ALL THE FOREGOING CONSIDERATIONS, the Court finds the accused SPO1 VIRGILIO BRECINIO y GASTON GUILTY beyond reasonable doubt of MURDER, defined and punished under Article 248 of the Revised Penal Code, as amended by the Death Penalty Law, but appreciating in his favor the mitigating circumstance of VOLUNTARY SURRENDER, hereby sentences him to suffer the penalty of *RECLUSION PERPETUA* and to pay the heirs of the deceased-victim ALBERTO PAGTANANAN the sum of P50,000.00 as indemnity for his death and the sum of P25,000.00 as expenses during the wake and to pay the costs of the instant suit.

The accused shall further suffer the accessory penalties of civil interdiction and perpetual absolute disqualification pursuant to Article 41 of the Revised Penal Code.

So ordered.

Hence, this appeal. Appellant alleges that the trial court erred in convicting him of murder and that, if an offense was indeed committed, it was only reckless imprudence resulting in homicide.

A careful evaluation of the records shows that the court *a quo* was correct in finding appellant guilty of killing the victim.

We reiterate the familiar and well-entrenched rule that the factual findings of the trial court on the credibility of witnesses deserve great weight, given the clear advantage of the trial judge (an opportunity not available to the appellate court) in the appreciation of testimonial evidence. The trial judge personally hears the witnesses and observes their deportment and manner of testifying. Although the rule admits of certain exceptions, we find no reason to hold otherwise in the present case.<sup>[13]</sup>

As found by the trial court — and we agree — both prosecution witnesses were credible. They gave a steadfast and credible narration of what they witnessed in a manner reflective of a candid and unrehearsed testimony. Robinson Arbilo, who stood only one-and-a-half meters in front of the assailant, was very direct, clear and spontaneous in describing how the appellant shot the victim. His testimony was:

TRIAL PROSECUTION:

Q What happened next when you heard that second shot?

A I saw that Brecinio poked his gun on Pagtananan and fired it.

Q Tell us your relative position from Pagtananan when you saw Brecinio poked his gun at him and fired?

A We were all seated on the bed, sir.

Q On your side, who is the person on your left side?

A Edwin Maceda, sir.

Q On your right side?

A Nobody because I was seated near the wall, sir.

Q Who was at the left side of Edwin Maceda?

A Sammy Bolanos, sir.

Q How about the person on the left side of Sammy Bolanos?

A Alberto Pagtananan, sir.

Q And on the left side of Alberto Pagtananan?

A Rafael Morales, sir.

Q Were you able to actually see Brecinio poked (*sic*) a gun