

## THIRD DIVISION

[ G.R. No. 138265, May 29, 2003 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROGER LAMASAN, ACCUSED-APPELLANT.**

### DECISION

**CARPIO MORALES, J.:**

On appeal is the Decision of October 6, 1998 of the Regional Trial Court of Iloilo City, Branch 23, in Criminal Case No. 48021 finding Roger Lamasan (appellant) guilty of murder for killing Rolando Parreñas, Jr. (the victim).

On August 29, 1997, appellant was, by Amended Information,<sup>[1]</sup> charged with murder allegedly committed as follows:

That on or about July 15, 1997, in the Municipality of Mina, Province of Iloilo, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with treachery and evident premeditation, did then and there willfully, unlawfully and feloniously attack, assault and shoot Rolando Parreñas, Jr. with the use of an unlicensed firearm he was then provided, hitting the victim and inflicting upon said Rolando Parreñas, Jr. wounds in his stomach which caused his death thereafter. (Underscoring in the original).

Contrary to law.

The Office of the Solicitor General (OSG) presented the prosecution's version of the facts leading to the death of the victim as follows:

At around 8:00 o'clock in the evening of July 15, 1997, Gerardo Pasamanero was in his house at Del Pilar Street, Mina West, Mina, Iloilo when Rolando Parreñas, Jr. [the victim], barangay captain of Brgy. Agmanhaphao, Mina, Iloilo, and Gelacio Aloquiña, a barangay tanod, passed by. Pasamanero invited the two to his house to drink beer. They talked about the forthcoming seminar of barangay captains and the project they were about to implement (pp. 4-5, TSN, October 21, 1997). At that point, appellant . . . arrived, entered Pasamanero's house and provoked [the victim] and Aloquiña. He shouted at them: "If you are brave in your place, I am also brave. If you are brave, you pull out your firearm." To that, [the victim] answered: "Pare, we know each other and we did not come here for trouble." Appellant, however, continued with his provocation and attempted to pull out his firearm. When he was about to pull out his firearm, [the victim] immediately hugged him and Aloquiña grabbed the .38 caliber revolver from appellant's waist and then handed it to Pasamanero (pp. 6-8, *ibid*). Pasamanero left [the victim] and Aloquiña with an instruction not to harm appellant while he went to

the police station to report the incident. He surrendered the revolver to P/Inspector Alex Velez (p. 9, TSN, November 4, 1997).

In a short while, Pasamanero came back with P/Insp. Velez and his two (2) men who conducted an investigation. The dispute, however, was settled with a dialogue between appellant and [the victim] and the latter agreed that appellant would be detained at the police station (pp. 9-11, TSN, October 21, 1997). [The victim] sustained a wound on his lips after appellant punched him (p. 16, *ibid*).

The police brought appellant to the Mina Police Station which was about fifty (50) meters away from Pasamanero's house, while [the victim] and Aloquiña proceeded to the house of one Mariano Parian in the same barangay to attend to the latter's wake (pp. 11-13, *ibid*). It was already 9:00 o'clock in the evening (p. 18, TSN, November 4, 1997). It turned out, however, that appellant managed to escape and ran towards the dark while he was being brought to the police station. The policemen pursued him but failed to catch him (pp. 33-35, TSN, December 9, 1997).

That same evening, at around 11:00 o'clock, Edwin Reyna, a resident of Del Pilar Street, Mina West, Mina, Iloilo, went to the wake of Mariano Parian and, there, he met [the victim] and Gelacio Aloquiña. [The victim] showed to him his swollen lips which, according to him, was caused by his wrestling with appellant. After half an hour, [the victim] and Aloquiña told him that they were going home. Shortly after the two (2) walked out of the house, Edwin Reyna, who was then standing by the door, heard a gunshot and saw [the victim] fell (sic) down. He immediately ran towards him and cuddled him. [The victim] told him: "Bring me to the hospital x x x I'm going to die." He also told him that appellant . . . shot him. Reyna shouted for help and carried [the victim's] body to the police patrol car. [The victim] was brought to the Iloilo Provincial Hospital at Pototan, Iloilo where he died not long thereafter (pp. 4-10, TSN, November 25, 1997).

Gelacio Aloquiña, who was with [the victim] when the shooting took place, saw [appellant] standing about 4 meters away, facing him and holding a 15½-inch firearm. When [appellant] saw him, he immediately walked away. Aloquiña was able to recognize [appellant] because of the light coming from the balcony of the house which was only about 5 to 6 meters away from [appellant] (pp. 14-17, TSN, December 2, 1997).

[On July 15, 2002], [the victim] died of hemorrhage secondary to multiple pellet wounds (p. 20, TSN, October 14, 1997).<sup>[2]</sup>

That appellant was "neither a licensed/registered firearms and ammunition holder of any kind or caliber nor ha[d] he applied to possess any firearms, much more an authority to carry firearms outside residence"<sup>[3]</sup> was established by the prosecution.

Denying the accusation and proffering alibi, the defense gave the following version, as related by the trial court:

[After consuming a glass of beer inside the house of **Pasamanero**, (appellant claimed as follows: He) asked permission to leave but as (the victim) was restraining him from leaving, an argument ensued in the course of which he saw Aloquiña holding a firearm on his waist. Pasamanero soon left but returned 10 minutes later with P/Insp. Alex Velez and two (2) policemen. Not long after, Aloquiña threw his firearm under the table which Pasamanero recovered (Exh. "C-1"). The incident between him and [the victim] was eventually settled by P/Insp. Alex Velez following which he was conducted to Sitio Burot by P/Insp. Velez with PO3 Sotelo and PO2 Moises de Pablo on board a patrol vehicle.]

He thereafter took supper in his house and slept at about 11:00-11:30 o'clock in the evening. Past 12 o'clock midnight, however, [P]/Insp. Velez woke him up and told him to man the radio room at the police station where he worked as a radio man. Upon reaching the police station, he was detained inside the cell where he was told that he was suspected of killing [the victim]. He claims that he does not own any firearm and that the testimony of Brgy. Captain Pasamanero concerning the recovery from his waist of a firearm is a big lie. He denies having shot [the victim]. He never went to the house of Mariano Parian where [the victim] was shot. On cross-examination, he admitted that there was no previous quarrel between him and [the victim] nor Barangay Captain Gerardo Pasamanero.

[O]n his part, **Dionisio Camino**, a *trisykad* driver, averred that he was present at the house of Mariano Parian attending the wake on July 15, 1997. While playing "pusoy" at the left side of the house, he heard one (1) gunshot at about 11:30 o'clock in the evening. He saw [the victim] lying face up at the door of the house from a distance of about two (2) armslengths (sic). Contrary to the testimony of Gelacio Aloquiña, he did not see Edwin Reyna at the crime scene and that nobody came near and talked with the victim during the time when the incident happened.

With corroboration, **Pinky Lamasan** averred that at about 10:00 o'clock in the evening of July 15, 1997, her husband[-appellant] arrived at their house situated at Sitio Burot, Mina East, Mina, Iloilo, with P/Insp. Alex Velez and two (2) other PNP members. [Appellant] took his supper, rested and slept at about 11:00 o'clock in the evening. At about 12:30 o'clock in the morning of July 16, 1997, [P]/Insp. Alex Velez returned and fetched [appellant] to man the radio. She woke up at 5:00 o'clock in the morning of July 16, 1997 and went to the public market at 7:00 o'clock that same morning. [Appellant] failed to return home. Then, somebody told her that [he] was detained. She went to the municipal jail and [he] told her that he is a suspect in the murder of [the victim]. She was stunned upon hearing it because he could not have murdered [the victim] as he never left the house that evening.

**Victoria Caños**, Forensic Chemist, National Bureau of Investigation, Regional Office VI, Iloilo City, conducted a **paraffin examination on July 16, 1997** on [appellant] upon the request of [P/Insp.] Alex Velez, Chief of Police, PNP, Mina, Iloilo (Exh. "3", p. 304, rec.). She prepared Chemistry Report No. C-97-46 (Exh. "4", p. 305, rec.) which yielded

negative results for nitrates on the left and right hands of [appellant] (Exh. "4-C"). (Emphasis and underscoring supplied).<sup>[4]</sup>

Discrediting appellant's denial and alibi in favor of the positive and categorical declaration of prosecution witness Aloquiña that he saw appellant standing and holding a long firearm some four meters away from the victim, as well as the victim's dying declaration, as related by Aloquiña and Reyna, that appellant was the one who killed the victim, the trial court convicted appellant of murder by Decision of October 6, 1998,<sup>[5]</sup> the dispositive portion of which reads:

**WHEREFORE**, premises considered and in the light of the facts obtaining and jurisprudence aforecited, **JUDGMENT** is hereby rendered finding the accused Roger Lamasan **GUILTY** beyond reasonable doubt of the crime of Murder and there being no mitigating nor aggravating circumstance attendant in the commission thereof hereby sentences said accused to the penalty of *Reclusion Perpetua* pursuant to Section 6 of Republic Act 7659 amending Article 248 of the Revised Penal Code.

The said accused is further condemned to indemnify the heirs of the deceased Rolando Parreñas, Jr. the sum of P129,530.00 by way of actual damages, P30,000.00 moral damages and P50,000.00 death compensation.

The Warden, Iloilo Rehabilitation Center, is ordered to commit the person of the accused to the National Penitentiary at the earliest opportunity.

**SO ORDERED.**<sup>[6]</sup>

Hence, the present appeal which ascribes the following errors to the trial court:

I.

THE LOWER COURT ERRED IN RULING THAT THE QUALIFYING CIRCUMSTANCE OF TREACHERY ALLEGEDLY ATTENDED THE COMMISSION OF THE ALLEGED CRIME OF MURDER. ON THE BASIS OF THE PROSECUTION EVIDENCE, THE ALLEGED CRIME COMMITTED IS ONLY HOMICIDE.

II.

THE LOWER COURT ERRED IN NOT UPHOLDING THE CONSTITUTIONAL PRESUMPTION OF INNOCENCE OF THE ACCUSED AND IN BASING CONVICTION MERELY BY DRAWING STRENGTH FROM THE WEAKNESS OF THE EVIDENCE FOR THE DEFENSE.

The second assigned error shall first be dwelt upon for if it is meritorious discussion of the first is rendered unnecessary.

Contrary to appellant's claim, the prosecution *prima facie* overcame his constitutional presumption of innocence. Prosecution witness Reyna clearly pierced such presumption as his following testimony shows, quoted *verbatim*:

[ATTY. ALIM for the prosecution:]

Q : So what happened next after [the victim] asked permission from you to go home?

A : After he had asked permission from me, I told them to just go ahead first.

Q : And what happened next after that?

A : After a while I heard the gunshot.

Q : What did you do after hearing that fire of the gun?

A : I saw [the victim] as if falling down.

Q : :What did you do then?

A : After that Gelacio Aloquiña ran to him and **I also ran to him.**

Q : What did you do in running going to the place where [the victim] fell?

A : We cradled him.

Q : What was your distance from the place where [the victim] fell?

A : Three (3) or four (4) meters.

Q : Now, what happened next Mr. Witness after you cradled [the victim]?

A : He told us, "You bring me to the hospital."

x x x x x

Q : What did [the victim] say?

A : Bring me to the hospital as if I'm going to die.

Q : Have you seen the wounds, if any, of [the victim]?

A : I saw.