

EN BANC

[G.R. No. 143294, July 17, 2003]

**PEOPLE OF THE PHILIPPINES, APPELLEE, VS. CIRILO MAGALONA
Y ONOON ALIAS "WILLIAM," APPELLANT.**

D E C I S I O N

PER CURIAM:

Before us, for automatic review, is the Decision^[1] of the Regional Trial Court of Nueva Ecija, Branch 29, Cabanatuan City, in Criminal Case No. 5899-AF, finding appellant Cirilo Magalona guilty of the complex crime of Murder with Multiple Frustrated Murder and Multiple Attempted Murder and sentencing him to suffer the death penalty.

The Information^[2] filed against appellant reads:

That on or about the 25th day of May, 1994, around 3:30 o' clock in the morning, at Sitio Ablang, Brgy. Sta Lucia Old, Municipality of Zaragoza, Province of Nueva Ecija, and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill, evident premeditation, treachery, taking advantage of night time and with the use of a hand grenade, did then and there willfully, unlawfully and feloniously throw the said hand grenade under the hut of one ROSENDO ARIMBUYUTAN, SR. which exploded, thereby hitting five (5) persons then sleeping in the said hut, namely: ROSARIO TORRES ARIMBUYUTAN, ROSALYN ARIMBUYUTAN, ROSEMARIE ARIMBUYUTAN, ROLDAN ARIMBUYUTAN AND RESTY ARIMBUYUTAN, which caused the instantaneous death of the latter and multiple blasting injuries to the first four-named persons, thus, with respect to them, the accused had performed all the acts of execution which could produce the crime of MURDER, but nevertheless did not produce it by reason of some causes independent of the will of the perpetrator, that is, the timely medical attendance extended to them which prevented their death, to the damage and prejudice of the herein victims.

CONTRARY TO LAW.

When arraigned on August 5, 1994, appellant pleaded not guilty.^[3] Trial ensued.

The Prosecution's Evidence

On May 25, 1994, the spouses Rosendo and Rosario Arimbuyutan and their children resided at Sitio Ablang, Barangay Sta. Lucia Old, Zaragoza, Nueva Ecija. Their hut, including the floor, was made of bamboo, while the roof was made of "*talahib*." The floor of their hut was three feet above the ground.^[4]

At around 3:30 a.m. of said date, while the spouses Arimbuyutan and their children, namely, Rommel, Rosendo, Jr., Rosalie, Rosemarie, Regina, Ruby, Roldan and Resty, were sleeping in their hut, there was an explosion beneath the floor. Said explosion killed Resty and injured Rosario, Roldan, Rosemarie and Rosalie.^[5] It also caused a small crater on the ground and damage to the hut up to the roof.^[6]

The victims were first brought to the medical center of the neighboring town of La Paz, Tarlac, and then to the Tarlac Provincial Hospital.^[7] On the way to the hospital, Resty Arimbuyutan died^[8] of hemorrhage secondary to "multiple blasting injury."^[9]

Rosario Arimbuyutan sustained "blastin[g] injury multiple with perforation of the uterus."^[10] Rosario Arimbuyutan testified that she sustained injuries from her waist to her knees and underwent a surgical operation.^[11]

Rosalyn Arimbuyutan sustained a fracture over the left kneecap.^[12]

Rosemarie Arimbuyutan sustained a "blasting injury left gluteal area (left buttocks)," ^[13] and was immediately given medicine for anti-tetanus.^[14] Dr. Renato Ang, who attended to Rosemarie, testified that without said prompt medical treatment, she could have died of complications that could have arisen from the wound she sustained.^[15]

Roldan Arimbuyutan sustained "blasting injury multiple posterior chest left."^[16] He was given emergency treatment called "tube thoracostomy" to prevent his lungs from collapsing.^[17] Dr. Renato Ang, who attended to Roldan, testified that without said medical treatment, the patient would have died.^[18]

Rosario Arimbuyutan testified that they spent P21,400^[19] for hospitalization, medical expenses, as well as, the funeral and burial expenses of her son, Resty Arimbuyutan.^[20]

At around 8 a.m. of May 25, 1994, Police Officer Rodolfo Gutierrez of the Philippine National Police of Zaragoza, together with two police officers and a photographer, investigated the grenade-throwing incident at Sitio Ablang, Barangay Sta. Lucia Old, Zaragoza, Nueva Ecija. Gutierrez found a safety lever pin (Exhibit "E") and some grenade shrapnels (Exhibit "F") near the post of the hut of Rosendo Arimbuyutan, Sr. He was informed that the victims of the explosion were already brought to the hospital. He made an investigation report^[21] of said incident.^[22] He also entered the incident in the police blotter.^[23]

According to Gutierrez, based on the sworn statements of Rosendo Arimbuyutan, Sr., Bienvenido Sabater and Adelina Mendoza, the suspect was appellant Cirilo Magalona alias William. They did not search for appellant anymore because Barangay Captain Florentino Almeda^[24] of Sta. Lucia, Zaragoza, Nueva Ecija, brought him to the police station in the morning of May 25, 1994. Almeda told Gutierrez that since appellant became a suspect of a rape case, appellant had already been in his (Almeda) custody up to the time he was surrendered to the

police authorities. The rape incident was reported to the police authorities on May 24, 1994 at 2 p.m.^[25]

Bienvenido Sabater,^[26] 40 years old, a farmer and a resident of Barangay Patola, Talugtug, Nueva Ecija, testified that on May 25, 1994, he was residing at Sitio Ablang, Sta. Lucia Old, Zaragoza, Nueva Ecija. His immediate neighbor then was Rosendo "Sendong" Arimbuyutan, Sr., whose hut was about five (5) to six (6) meters away from his hut. Their huts were fronting each other.^[27]

Sabater narrated that at around 3:30 a.m. of May 25, 1994, he was inside his hut sitting on a bamboo bed. He was pacifying his six-month-old child and, at the same time, drinking coffee, while his wife was boiling water for his child's milk. His child was lying on his side while he was gently tapping him to stop him from crying. Sabater demonstrated that he was seated on the bed, which was beside the window on his left, while he was facing the open door. His door and window had no shutters and were just open. The hut was not their permanent residence and they just stayed there during the farming season.^[28]

While he was taking coffee, Sabater saw a person, named William, pass by in front of his hut and the hut of Rosendo Arimbuyutan, Sr. He also saw William hiding behind the acacia tree in front of his hut, which was about five (5) to six (6) meters away. Said acacia tree was between his hut and the hut of Arimbuyutan. Then he saw an explosion under the floor of the hut of Arimbuyutan and saw William running towards the direction of the "flood control." ^[29]

Upon hearing the explosion, Sabater immediately took his child and lay face down on the floor in front of the open door for four to five seconds. He was facing their open door; hence, he saw William run away, and when he noticed that William was not with somebody, he stood up. He heard the family of Rosendo Arimbuyutan, Sr. crying.^[30]

Sabater testified that he recognized the person who passed by his hut and who hid behind the acacia tree to be someone named William, because the latter frequently went to their place in Sitio Ablang. He stated that he also recognized William at 3:30 a.m., because the moon was bright and he had a lighted kerosene lamp hanging by the post. Since the door of his hut was open, the light from the kerosene lamp illuminated William who was hiding behind the acacia tree near his hut. In the courtroom, he pointed to the person whom he called "William," who, when asked, identified himself as Cirilo Magalona.^[31]

Sabater testified that appellant was a farm worker of one Corazon Ramos on a commission basis at Sitio Ablang.^[32]

Sabater admitted that he did not actually see who threw the grenade under the hut of Rosendo Arimbuyutan, Sr.^[33]

Adelina Mendoza, 71 years old, a housekeeper, testified that she knew appellant because he was her neighbor. At midnight of May 22, 1994, while she was drinking coffee in her house at Sitio Ablang, appellant knocked at her door and conversed with her. He told her that he was very angry at Rosendo Arimbuyutan, Sr. and that

he would return and kill him.^[34]

On cross-examination, Mendoza testified that she knew appellant for less than a year. She had seen appellant many times but talked to him only once before the grenade explosion. She admitted that Rosendo Arimbuyutan, Sr. was her nephew.^[35]

On December 2, 1996, Rosendo Arimbuyutan, Sr. executed an Affidavit of Desistance.^[36] The Court disregarded said affidavit since the prosecution had already rested its case and it was the turn of the defense to present its evidence.^[37]

Appellant's Escape Deemed Waiver of His Right to Present Evidence

In the hearing scheduled on July 18, 1997, appellant did not appear in court. The trial court ordered the Provincial Warden of Nueva Ecija to explain why he should not be held in contempt for the non-appearance of appellant during the said hearing. In his letter,^[38] the Provincial Warden explained that pursuant to a COMELEC Resolution,^[39] the Provincial Jail was under the control of the Philippine National Police (PNP) starting April 23, 1995. He stated that the policemen assigned to the Provincial Jail ordered appellant to guard a co-detainee who was confined in the hospital and who died on July 8, 1997. After the detainee's death, appellant did not return to the Provincial Jail.

The Court issued an Order dated August 21, 1997 directing the PNP Provincial Director of Nueva Ecija to investigate the escape of appellant, which was reiterated in another Order^[40] dated February 16, 1998. In the latter Order, the Court, as prayed for by the Assistant Provincial Prosecutor, deemed the appellant to have waived his right to present evidence. Consequently, the case was considered submitted for decision.

The Trial Court's Ruling

The trial court held that the testimony of Avelina Mendoza showed that appellant had a motive to harm complainant Rosendo Arimbuyutan, Sr.^[41] It also ruled that the testimony of Bienvenido Sabater established that appellant was responsible for the explosion which killed Resty Arimbuyutan and injured Rosario, Rosemarie, Rosalyn and Roldan, all surnamed Arimbuyutan.^[42] Moreover, the trial court considered appellant's escape from prison as persuasive evidence of his guilt.^[43]

On July 30, 1998, the trial court pronounced judgment, thus:

WHEREFORE, this court finds the accused CIRILO MAGALONA y ONOON guilty of the crime of MURDER with Multiple Frustrated Murder and Multiple Attempted Murder, and hereby sentences him to suffer the maximum penalty of DEATH, and to pay the Spouses Rosendo Arimbuyutan, Sr. and Rosario Arimbuyutan FIFTY THOUSAND PESOS (P50,000.00) as indemnity for the death of their son Resty Arimbuyutan, moral damages of ONE HUNDRED THOUSAND PESOS (P100,000.00) and actual damages of TWENTY ONE THOUSAND FOUR HUNDRED PESOS

(P21,400.00).

INASMUCH as the accused Cirilo Magalona who has been sentenced to death penalty in absencia because he escaped from the custody of members of the PNP who were then in charge of the Provincial Jail of Nueva Ecija by assigning him to guard a co-detainee in a hospital on or about July 8, 1997, furnish a copy of this Decision to the Chief of the Philippine National Police, Camp Crame, Quezon City for a proper investigation of the anomalous escape of said accused.

SO ORDERED.^[44]

On May 21, 1999, the Provincial Warden of the Provincial Jail of Nueva Ecija informed the trial court that appellant had been arrested and was detained at the Provincial Jail.^[45]

Appellant contends that the trial court erred, thus:

I

THE TRIAL COURT ERRED IN GIVING CREDIT TO THE TESTIMONIES OF WITNESSES AVELINA MENDOZA AND BIENVENIDO SABATER;^[46]

II

THE TRIAL COURT ERRED IN CONVICTING THE ACCUSED CIRILO MAGALONA.^[47]

The Court's Ruling

Appellant contends that the trial court erred in giving credence to the testimonies of prosecution witnesses Avelina Mendoza and Bienvenido Sabater.

Appellant asserts that the trial court should not have given any probative value to Avelina Mendoza's testimony in determining the motive behind the incident for two reasons: First, the witness and appellant are not long-time acquaintances, having talked to each other only once. The alleged revelation to kill Rosendo Arimbuyutan, Sr. to a stranger during a visit at midnight is contrary to ordinary human experience. Second, Mendoza is the aunt of complainant Rosendo Arimbuyutan, Sr.^[48]

We disagree.

Appellant cannot consider Avelina Mendoza a stranger as Mendoza testified that she knew appellant since he was her neighbor.^[49] Being neighbors, it is not contrary to human experience for appellant to have visited Mendoza at midnight of May 22, 1994. It was incumbent on appellant to disprove said visit. Having failed to do so, the positive testimony of Mendoza prevails.

Moreover, although Avelina Mendoza is the aunt of complainant Rosendo Arimbuyutan, Sr., such relationship does not, by itself, impair Mendoza's credibility as a witness.^[50] On the contrary, her relationship to Arimbuyutan would deter her