

FIRST DIVISION

[G.R. No. 153781, September 24, 2003]

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. MATEO GREGORIO Y CARPIO A.K.A. "JHUN TAYO", ALBERTO GREGORIO Y CARPIO A.K.A. "TONGE" (DECEASED) AND JUANCHO OSORIO Y DELA PAZ, ACCUSED.

MATEO GREGORIO Y CARPIO A.K.A. "JHUN TAYO" AND JUANCHO OSORIO Y DELA PAZ, APPELLANTS

DECISION

YNARES-SANTIAGO, J.:

This is an appeal from the decision^[1] of the Regional Trial Court of Pasig City, Branch 265, in Criminal Case No. 113892-H, finding appellants Mateo Gregorio and Juancho Osorio guilty beyond reasonable doubt of the crime of Murder, and sentencing each of them to suffer the penalty of *reclusion perpetua*, and to indemnify the heirs of the victim the amounts of P75,000.00 as civil indemnity and P50,000.00 as moral damages.

On May 25, 1998, an Amended Information for Murder was filed against Mateo Gregorio y Carpio, a.k.a. "*Jhun Tayo*," Alberto Gregorio, a.k.a. "*Tonge*", and Juancho Osorio y Dela Paz. The Information reads:

On or about January 23, 1998, in Taguig, Metro Manila and within the jurisdiction of this Honorable Court, the accused conspiring and confederating together and mutually helping and aiding one another, armed with guns, with intent to kill, and with abuse of superior strength and by means of treachery, did then and there willfully, unlawfully and feloniously attack, assault, and shoot Juanito Regacho y Gamboa, thereby inflicting upon said Juanito Regacho y Gamboa fatal shot wounds, which directly caused his death.

Contrary to law.^[2]

The three accused were arraigned on different dates and pleaded *not guilty*.^[3] They filed a Petition for Bail, which was denied by the trial court in its Order dated May 16, 2001.^[4]

In the meantime, accused Alberto Gregorio died^[5] on July 23, 2000, while the Petition for Bail^[6] was being heard.

Trial on the merits thereafter ensued.

Prosecution witnesses Henry Ginez and Pablo Bihasa testified that at 10:40 p.m. of

January 23, 1998, they saw the victim, Juanito Regacho, standing in front of a store owned by a certain Bobit on Kalayaan Street, Ususan, Taguig, Metro Manila. They heard the victim's wife, Francisca, ask him to come inside their house, located three meters away from the store. Juanito remained in front of the store.

Moments later, a tricycle pulled up and appellant Juancho Osorio alighted. He drew a gun and fired at Juanito, but the latter was able to parry Juancho's hand. Juanito then ran to the alley towards his house.

Juancho then pointed the gun at the bystanders, who scampered towards a parked jeepney and hide.

Meanwhile, appellant Mateo Gregorio came out from a nearby alley and fired his gun in the air. He approached appellant Juancho Osorio and asked, "*Nasaan na?*" Both appellants followed the victim to the alley. Thereafter, gunshots were heard.

Prosecution witness Ignacio Lopeña, Jr. declared that earlier that day, Alberto Gregorio and the victim had a heated altercation after they came from a *mahjongan* on the day the crime happened. He heard Alberto challenge the victim, "*Kung gusto mo, tapusin na natin ito.*"

Ignacio Lopeña, Sr., testified that he was awakened when he heard a gunshot. He went outside the house and saw Mateo Gregorio running after the victim, who was his brother-in-law. Appellants followed the victim into an alley. Thereafter, he heard gunshots coming from the alley. Appellants came out of the alley still holding their guns.

The victim died in front of the door of his house. Ignacio, Sr. asked the bystanders to help his sister-in-law bring the victim to the hospital. The victim was brought to the Cruz-Rabe Hospital but he was pronounced dead on arrival.

Dr. Emmanuel L. Aranas, who performed the post-mortem examination, found that the victim sustained four gunshot wounds. The wounds in the right lobe of the liver and the lower lobe of the right lung were fatal. He testified that the cause of the victim's death was the gunshot wounds on the torso.^[7]

PO3 Conrado Mapili, the officer who responded to the shooting incident, learned from the residents that Mateo Gregorio, Alberto Gregorio and an unidentified person were the suspects in the killing of the victim. He conducted a follow-up investigation and took the statements of the prosecution witnesses which led to the filing of the instant criminal case.

In his defense, appellant Mateo Gregorio narrated that on the night of the crime, he was on his way home after getting the gun which somebody pawned to him. He admitted that he fired said gun in the air because Ignacio, Sr., brother-in-law of the victim, was meddling in a heated altercation between the victim and Alberto Gregorio. He saw the victim run away and afterwards he heard gunshots. He saw the gunman board a tricycle. On the whole, he denied any participation in a conspiracy to kill the victim.

Joemar Gregorio, nephew of Mateo, corroborated the latter's testimony. He learned from his mother that his uncle, Alberto Gregorio, had an altercation with the victim.

He saw Mateo Gregorio who had just alighted from a tricycle. They heard gunshots and ran away.

Appellant Juancho Osorio denied involvement in the killing. He testified that on January 23, 1998 at about 9:00 p.m., his family watched the amateur singing contest and the gay beauty pageant at the fiesta in their barangay (Wawa, Tuktukan, Taguig). He stayed until 1:00 a.m. the following day. He testified that he could not afford to buy a gun because he just drove a tricycle to earn a living for his family. He did not even know how to use a gun. He claimed that he did not know Mateo Gregorio and Alberto Gregorio at the time of the incident.

On February 26, 2002, the trial court rendered its decision, the dispositive portion of which states:

WHEREFORE, in view of the foregoing, this Court finds accused MATEO GREGORIO y CARPIO a.k.a. "Jhun Tayo" and Accused JUANCHO OSORIO y DELA PAZ, GUILTY beyond reasonable doubt of the crime of MURDER for the death of Juanito Regacho y Gamboa and hereby sentences each of them to suffer the penalty of RECLUSION PERPETUA and to pay the heirs of the deceased, Juanito Regacho y Gamboa, the sum of SEVENTY-FIVE THOUSAND (P75,000.00) PESOS as indemnity; FIFTY THOUSAND (P50,000.00) PESOS as moral damages, without subsidiary imprisonment in case of insolvency; and to pay the costs.

SO ORDERED.^[8]

Appellants raised the following assignment of errors:

- I. THE LOWER COURT'S FINDING AND CONCLUSION OF FACTS ARE CONTRARY TO THE EVIDENCE ON RECORD.
- II. THE LOWER COURT ERRED IN CONVICTING BEYOND REASONABLE DOUBT BOTH ACCUSED FOR THE CRIME OF MURDER.^[9]

The first assignment of error has no merit.

While there was no direct evidence of the commission of the crime, the evidence presented by the prosecution constitute circumstantial evidence sufficient to warrant appellants' conviction. The following requisites for circumstantial evidence to sustain a conviction were met, to wit:

- (a) There is more than one circumstance;
- (b) The facts from which the inferences are derived are proven; and
- (c) The combination of all the circumstances is such as to produce a conviction beyond a reasonable doubt.^[10]

The evidence for the prosecution established the following facts:

1. There was a heated altercation between Alberto Gregorio, brother of appellant Mateo Gregorio, and the victim. Ignacio, Jr. heard Alberto challenge the victim, "**Kung gusto mo tapusin na natin**