

FIRST DIVISION

[G.R. No. 129053, January 25, 2002]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. PO3
AKIB NORRUDIN, ACCUSED-APPELLANT.**

DECISION

KAPUNAN, J.:

This is an appeal from the Decision, dated January 24, 1997, of the Regional Trial Court of Surigao City, Branch 32, in Criminal Case No. 4564^[1] finding accused-appellant Akib Norrudin guilty beyond reasonable doubt of murder.

The Information charging accused-appellant stated:

That on or about July 8, 1995, in the City of Surigao, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with a firearm, with grave abuse of authority he being a member of the Philippine National Police assigned at Surigao City PNP Station, with intent to kill and by means of treachery, did then and there wilfully, unlawfully and feloniously attack, assault and attack Vidal Avila, Jr., hitting the latter on the vital part of his body, thereby inflicting upon him serious gunshot wound which caused his death, to the damage and prejudice of the heirs of the deceased in such amount as may be allowed them by law.

Contrary to Article 248 of the Revised Penal Code with the qualifying circumstance of treachery.^[2]

Upon arraignment, the accused-appellant pleaded Not Guilty. Thereafter, trial ensued.

The prosecution presented nine witnesses: PO2 Eleazar Carias, Dorothy Rivera, Ramil Llorado, PO3 Ruperto Deguino, Senior Police Inspector Edgardo Leva, PO3 Eutropio Paltinca, Police Inspector Armada, Dr. Audie Relliquete and Mrs. Florentina Avila.

PO2 Carias testified that in the evening of July 7, 1995, he reported for work at the Surigao City Police Station. He saw the accused-appellant at the police station although the latter was already off-duty. The accused-appellant was wearing civilian clothes and had his firearm tucked at the side of his waist.^[3]

Sometime later that evening, upon the invitation of Police Inspector Diosdado Morales, Carias, Morales and the accused-appellant went to Barangay Lipata to inspect the police team assigned there and reached said place at around 9:15 p.m. In Barangay Lipata, they had some drinks with a friend until about 12:30 a.m. of

July 8, 1995. Thereafter, Morales, Carias and the accused-appellant returned to Surigao City.^[4]

Upon reaching the city, the accused-appellant, who was already drunk by then, got off in front of Casa Blanca, a pension house, restaurant and videoke bar located at Narciso Street. He invited his companions to go inside said establishment for another round of drinks but the latter refused as they were still on duty. Carias and the others then returned to the police station.^[5]

After their return to the police station in Surigao City, SPO3 Antonio Cortes arrived and requested Carias to help tow their police car which ran out of gas in Barangay Rizal. Since the vehicle used for towing was in the house of SPO3 Ruperto Deguino, Carias and Cortes went to Deguino's house and requested the latter to drive the tow vehicle.^[6] Deguino acceded to their request, but first went to the police station to get the rope used for towing while Carias and Cortes went ahead to Barangay Rizal.^[7]

At around 2:00 a.m., while Deguino was at the police station, he received a radio communication requesting police officers to proceed to Casa Blanca in connection with a shooting incident which had just occurred therein.^[8]

Kit Aguilar, a guest relations officer (GRO) testified that earlier in the evening of July 7, 1995, prior to the occurrence of the shooting incident at Casa Blanca, she and a certain Maritess, a fellow GRO, were entertaining a customer named Vidal Avila, Jr.^[9]

At around 1:00 a.m. of the following day, July 8, 1995, the accused-appellant arrived at Casa Blanca. Maritess, who was then with Kit Aguilar and Vidal Avila, Jr., rose to meet him, as he was her live-in boyfriend.^[10] Maritess and the accused-appellant sat at another table and ordered beer. Not long after that, they started arguing and the accused-appellant began shouting at Maritess. Thereafter, they stood up from their table and went outside the restaurant, and walked toward the front gate of the restaurant compound where they continued arguing.^[11] Later, after Avila, Jr. stood from his table, paid his bill and went outside the restaurant to ride his motorcycle. Aguilar looked through the restaurant's window and saw that Avila, Jr. turned right to Narciso Street. Shortly afterwards, she heard a gunshot. Maritess then went back inside the restaurant. Aguilar asked Maritess if she knew anything about the gunshot which was fired earlier. Maritess replied that it was her boyfriend, the accused-appellant, who fired the shot. Subsequently, accused-appellant also went back inside Casa Blanca, finished his drink and left the restaurant with Maritess.^[12]

Dorothy Rivera, the owner of Casa Blanca, corroborated Aguilar's testimony and stated that in the early morning of July 8, 1995, while she was supervising the waitresses inside the restaurant, she saw the accused-appellant and Maritess quarrelling near the front gate of the restaurant compound.^[13] Shortly thereafter, Avila, Jr. bade her goodbye. Rivera knew Avila, Jr. because he was a cousin of her brother-in-law. Avila then rode his motorcycle which was parked inside the restaurant compound and went on his way home.^[14]

As Avila turned his motorcycle to the right side of the gate of Casa Blanca, Rivera heard a gunshot.^[15] Thereafter, Maritess went back inside the restaurant. Rivera then asked her if she knew anything about the gunshot that had just been fired. Maritess replied that the accused-appellant had fired a warning shot.^[16] Later, the accused-appellant also went back inside the restaurant and finished his beer. Maritess and the accused-appellant talked again for a few minutes and then they left Casa Blanca.^[17]

For his part, Ramil Llorado testified that at about 1:00 a.m. on July 8, 1995, while he was drinking liquor with two other persons in front of his house in Narciso St., some fifty to sixty meters away from Casa Blanca, he heard a lone gunshot. Three to four minutes after the said gunshot was fired, a man riding a motorcycle stopped in front of them and asked for help. Thereafter, the man fell down from his motorcycle. Llorado recognized the man as Vidal Avila, Jr., an employee in the Office of the City Engineer of Surigao City.^[18] Llorado and one of his friends then hailed a tricycle and rushed to the city police station. They reported the incident to the desk officer and requested for assistance. The police then sent two policemen in a patrol car to Narciso St. to look into the matter.^[19]

Upon returning to Narciso St. with the policemen, Llorado helped carry Avila, Jr. inside the police car to bring him to the Surigao Provincial Hospital. Llorado cradled Avila, Jr.'s head on his lap and asked the latter who shot him. Avila, Jr. replied in a weak voice that a policeman shot him. Llorado was shocked upon hearing Avila, Jr.'s answer, but since they were inside a police car at that time together with some policemen, he refrained from further asking questions.^[20]

Meanwhile, as PO3 Deguino was driving to Casa Blanca in response to the radio communication which he had earlier received, he saw some men carrying a wounded man inside a police car parked along Narciso St. He learned that the wounded man was the person shot in front of Casa Blanca earlier that morning.^[21] He then proceeded to Casa Blanca to investigate regarding the incident. He was told by a certain Simon Ferol and a Benhur Turtor who were at Casa Blanca at the time of the shooting that the assailant was Deguino's fellow police officer.^[22] Later, PO2 Carias told him that the policeman whom they dropped off at Casa Blanca at around 12:45 a.m. of July 8 was the accused-appellant, and that the latter was already drunk when he got off at said restaurant.^[23] Deguino also talked to Kit Aguilar who confirmed that the accused-appellant was at Casa Blanca with his girlfriend Maritess earlier that morning.^[24]

Thereafter, Deguino and PO3 Marcial Tinio proceeded to the hospital where Avila, Jr. was brought to ask the latter some questions regarding the shooting. Upon arriving there at around 3:00 a.m., they found another policeman surnamed Cabada trying to interview Avila, Jr.^[25] Sensing that Avila, Jr. was dying, Deguino requested Cabada to allow him to ask the questions as he and the victim were friends.^[26]

Deguino then placed his mouth near Avila, Jr.'s ear and spoke loudly: "Jun, this is your friend Bebot." Avila, Jr. opened his eyes and raised his head toward Deguino. The latter then asked Avila, Jr., "Do you recognize the person who shot you?" After Deguino repeated the question three times, Avila, Jr. replied yes. Deguino then

asked: "*Kinsa man?* (Who) Who, a policeman?" Avila, Jr. said yes again. Deguino asked the latter a third question: "Was it Akib?" Deguino had to repeat the question several times before Avila finally said yes.^[27]

Deguino could not believe what Avila, Jr. had just said that he felt his body hairs stand up. He and Tinio then went to their vehicle and returned to the police station. Upon reaching the same, he informed Inspector Gregorio Peramide, the officer of the day, what Avila, Jr. had told him.^[28]

Another witness, Senior Inspector Edgar Leva, testified that at around 2:00 a.m. on July 8, 1995 while he was waiting in Barangay Lipata for the vehicle that would tow the car used by him and some other policemen back to Surigao City, he monitored a message from their radio equipment that there was a shooting incident in Casa Blanca in Narciso St., Surigao City. About twenty minutes after he heard said message, he arrived at the Surigao City Police Station where he met Peramide whom he ordered to follow-up the developments regarding the shooting incident.^[29] At around 3:00 a.m., not long after Leva had returned to his residence, Inspector Morales arrived therein and reported to him that the accused-appellant was the prime suspect in the shooting of Avila, Jr.^[30] Shortly thereafter, Peramide, and later Tinio and Deguino also arrived at Leva's house and made similar reports that the accused-appellant was suspected of having shot Avila, Jr.^[31] As deputy chief of police of Surigao City, Leva directed them to cordon off the house of Norrudin in Gimena St., Surigao City as there were reports that the accused-appellant was in his home.

Subsequently, Leva received a call that he was needed at the accused-appellant's house which was already surrounded by policemen.^[32] When he reached the same, he called out the accused-appellant's name and asked the latter to come out of the house. However, the accused-appellant instead asked Leva to enter the house. Leva and Deguino went in and the accused-appellant surrendered to them. Leva then brought the accused-appellant to the police station.^[33]

PO3 Eutropio Paltinca, a laboratory technician in the Philippine National Police (PNP) Crime Laboratory in Cagayan de Oro City who had been temporarily assigned to the forensic processing department in Surigao City, testified that he conducted a paraffin test on the accused-appellant pursuant to the request of the Chief of Police of Surigao City. He conducted the test on both hands of the accused-appellant.^[34] The following day, he personally brought the test results to the crime laboratory in Cagayan de Oro City.

Chemistry Report No. C-022-95 dated July 9, 1995 prepared by forensic analyst Senior Inspector Vicente P. Armada, revealed that the accused-appellant's right hand tested positive for gunpowder residue.^[35]

Armada also examined the revolver, a caliber .38 Squares Bingham with Serial No. 924673 assigned to the accused-appellant, to determine if the same had been fired recently before it was confiscated.^[36] Chemistry Report No. C-036-95 prepared by Armada stated that nitrate and gunpowder residue were found on the barrel and cylinder of the firearm. He concluded that the firearm had been fired recently before it was confiscated.^[37]

The physician on duty in Surigao Provincial Hospital on July 8, 1995, Dr. Audie Relliquete, testified that at about 2:35 a.m. on July 8, 1995, a wounded man identified as Vidal Avila, Jr. was brought to the hospital due to a gunshot wound.^[38] Dr. Relliquete examined the victim and noticed that the latter was cyanotic and pale due to loss of blood.^[39] The doctor discovered that the bullet entered the victim's body on the right side of the abdomen and exited at the left side of his navel. The wound of entry was contused and circular and had the characteristics of a bullet wound. The trajectory of the wound was about level from the points of entry to exit.^[40] Dr. Relliquete also stated that he applied dextrose and other medicines on Avila, Jr. and scheduled him for an exploratory laparotomy, but the victim died at around 4:10 a.m. even before the operation could be conducted. The cause of death was severe blood loss, shock and heart failure secondary to the bullet wound.

The victim's wife, Florentina Avila (Mrs. Avila), testified that she and Avila, Jr. had four children. Their oldest child was 11 years old while the youngest was only two years old.^[41] At the time of his death, Avila, Jr. was 43 years old and working as a building inspector at the City Engineer's Office with a net take home pay of P1,909.88 per month.^[42] Had he lived until retirement at age 60, he would have about 17 more years in government service and would have earned a total of P389,615.52 during this period.^[43] Mrs. Avila further stated that she spent a total of P113,900.00 in miscellaneous expenses for the wake and interment of her husband.^[44] She also claimed moral damages for the shock, serious anxiety and worry that she and her children suffered as a result of her husband's death.^[45]

The accused-appellant denied the charges against him. While he admitted in his testimony that on the night of July 7, 1995, after his duty, he went to Barangay Lipata, Surigao City with Police Inspector Morales, PO2 Carias, and PO2 Valeciano Rivas to inspect the police detachment located therein, and thereafter, to have a few drinks, he insisted that after they returned to Surigao City at about 2:00 a.m. on July 8, 1995, he asked PO3 Pepito Gloria who was driving the vehicle to drop him off at his house in the PNP Compound in Borromeo St. He said that when he got home, he changed clothes, ate supper and then went to sleep.^[46]

The accused-appellant further stated that at around 6:30 a.m. of July 8, 1995, he was awakened by the arrival of Senior Inspector Edgar Leva and SPO4 Antonio Cortes at his residence. He was told that they were going to the police station. Upon their arrival at said place, Leva and Cortes asked the accused-appellant what he did earlier that morning. The latter replied that he did not do anything. Leva then told him that he (accused-appellant) shot a man dead at Casa Blanca. The accused-appellant said he was stunned by Leva's statement since he had nothing to do with the incident.^[47]

The accused-appellant also denied that Maritess, the GRO from Casa Blanca, is his girlfriend. He maintained that he does not know the woman and he has not gone inside the said restaurant.^[48]

The testimony of Ruperto Deguino was assailed by the accused-appellant on the ground of alleged bias and ill-will. He said that sometime in August 1993, he and Deguino were assigned to guard the PHILNICO in Barangay Nonoc, Surigao City.