

SECOND DIVISION

[G.R. No. 130596, February 15, 2002]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
RODOLFO CASTILLANO ALIAS "RODEL", ACCUSED-APPELLANT.**

D E C I S I O N

DE LEON, JR., J.:

This is an appeal from the Decision^[1] of the Regional Trial Court of Negros Occidental, Branch 47, Bacolod City in Criminal Case No. 18102 convicting appellant Rodolfo Castellano, alias Rodel, of the crime of murder and sentencing him to suffer the penalty of *reclusion perpetua*.

The Information dated December 18, 1996 charging the appellant of the crime of murder reads:

That on or about the 20th day of August, 1996, in the City of Bacolod, Philippines, and within the jurisdiction of this Honorable Court, the herein accused, without any justifiable cause or motive, being then armed with a .38 caliber revolver, with intent to kill and by means of treachery and evident premeditation, did, then and there wilfully, unlawfully and feloniously attack, assault and shoot with said revolver Ramil J. Hijapon, thereby causing upon the person of the latter the following wounds, to wit:

Cardiopulmonary arrest
Penetrating gunshot wound
1 chest (R)parasternal
line at the level of the nipple

which directly caused the death of the said victim Ramil J. Hijapon.^[2]

When arraigned on April 1, 1997, the appellant, assisted by counsel, pleaded not guilty.^[3] Thereafter, trial on the merits ensued.

The version of the prosecution:

The victim's widow, Lucia Hijapon, testified that at about 8:00 o' clock in the evening of August 20, 1996, she was conversing with her husband, Ramil Hijapon, inside their store, which was within their house at Purok Pepsi, Zone 5, Barangay Bata, Bacolod City, when her husband was shot by appellant Rodolfo Castellano. She was opposite her husband who was facing the street with his back against the wall. She heard two (2) gunshots. After the first gunshot, she saw her husband holding his chest because he was hit. She pulled him towards her and looked back at the window, and saw Rodolfo Castellano holding his gun and then fired a second shot

which missed her husband because she pulled him. The second gunshot instead hit the concrete wall where her husband was leaning, and created a hole or mark thereon. Prior to the shooting, she and her husband were not aware of any danger as they were then just conversing with each other. Her store measured four (4) feet by ten (10) feet, and the wall of her store facing the street was made of concrete from the floor, and the upper portion was made of cyclone wire. At that time, the inside and outside portions of her store were well-lighted, which enabled her to see any person standing outside her store. When she saw the appellant firing a gun, she was very near the place where appellant was standing and what divided them was only the cyclone wire, while her husband was less than an armslength away from the appellant. Her son, Buenaventura Hijapon, was then inside the store. Aside from the appellant, there were no other person outside the store. After her husband was hit, she shouted for help but no one immediately came to help because they were afraid of the assailant. She kept on shouting for help and it took minutes before their neighbor showed up and looked for a vehicle to bring her husband to the hospital. However, her husband was already dead^[4] when they reached the hospital.^[5]

Lucia Hijapon attributed the killing of her husband to the fact that on March 3, 1994 at around 9:00 o' clock in the morning, the appellant tried to shoot her husband at their store at Purok Pepsi, and her husband filed a case against him. At that time, her husband was a waiter and when he was off-duty, he volunteered as a CVO and accompanied the arresting officer who arrested the appellant.^[6]

She felt grief for the death of her husband who was working as a waiter at the Bascon Hotel for a monthly salary, including tips, amounting to Four Thousand Pesos (P4,000.00). She spent more than Thirty Thousand Pesos (P30,000.00) for the wake, but she failed to adduce evidence to substantiate the expense.^[7]

Buenaventura Hijapon corroborated the testimony of his mother, Lucia Hijapon. He testified that at around 8:00 o' clock in the evening of August 20, 1996, he was inside the store in their house at Purok Pepsi, Zone 5, Barangay Bata, Bacolod City minding the store and resting. His parents, Lucia and Ramil Hijapon, were also inside the store, and they were less than an armslength away from him. While he was standing near the cyclone wire facing the road, he saw the appellant approaching their store. When the appellant was at the store near his parents, the appellant pulled his .38 caliber revolver from his waist, inserted it in their jalousie window, and fired twice at his father who was sitting inside the store. At that time, appellant was less than an armslength away from him and less than a meter away from his father. At the first gunshot, his father was hit, but the second gunshot missed his father because he was pulled by his mother. He was shocked by the incident but his mother was able to shout for help. After firing the two (2) shots, appellant hurriedly left with his gun. He attributed the killing to appellant's grudge against his father because on March 3, 1994, appellant shot his father but his gun did not fire; thus, his father filed a case for attempted homicide against appellant.^[8]

Buenaventura Hijapon further testified that during his father's lifetime, his father told him and his brothers to be careful of appellant because he was a traitor, had a grudge against their family, and harbored a grudge against appellant. Although he saw appellant coming when the latter was three (3) meters away from their store, he failed to warn his parents who were conversing with each other because the

incident happened suddenly. Before March 3, 1994, he used to see appellant passing by their store, but thereafter, he did not see appellant pass by anymore until the said incident of August 20, 1996.^[9]

PO3 Willie Perez, who was assigned in August 1996 at Police Station 3, Barangay Mandalagan, Bacolod City, testified that on August 20, 1996, he conducted an investigation regarding a shooting incident which happened at about 8:00 o'clock in the evening at Purok Pepsi, Zone 5, Barangay Bata, Bacolod City. Together with the React Team led by SPO2 Ricardo Custodio and PO3 Hernani Magallanes, he proceeded to the crime scene but the victim, Ramil Hijapon, was already brought to Riverside Hospital. Inside the house of the victim, they discovered bloodstain and a slug hole of a .38 caliber slug on the wall. The wife and son of the victim, who were eyewitnesses to the crime, said that the suspect of the shooting incident, appellant Rodolfo Castellano, had a grudge against the victim because, a couple of years ago, the appellant was charged in court by the victim with attempted homicide. From the slug recovered from the crime scene, it appears that a .38 caliber revolver was used in shooting the victim. After the incident, appellant went into hiding. The team of investigators submitted their Investigation Report^[10] duly signed by P03 Willie Perez.^[11]

Dr. Johnnie Aritao, Jr., Bacolod City health officer, conducted the post mortem examination of the victim, Ramil Hijapon, and submitted a report^[12] thereon dated August 21, 1996 with the following findings:

Wound, gunshot 0.7 cm in diameter, roughly oval in shape, surrounded by a contused-abraded collar, 0.3 cm. around the gunshot wound at the 5th intercostal space, right along parasternal line at the level of the nipple, directed forward posteriorly rupturing the heart and lung and the bullet lodged at the spinal vertebra.^[13]

The cause of the victim's death was "cardio-respiratory arrest, secondary to a penetrating wound, chest right, along parasternal line, ruptured heart and lung due to a gunshot wound."^[14] The bullet lodged at the spinal vertebra, with the entrance wound at the right breast.^[15] Dr. Aritao concluded that at the time of the shooting, the barrel of the gun was more than six (6) feet away from the victim because there were no powder burns in the wound. Ordinarily, a distance of about six (6) inches would produce powder burns. Dr. Aritao stated that if the victim was given immediate medical attention, he would have probably survived. The location of the entrance wound showed that the victim was facing his assailant when he was shot.^[16]

Viveca Natu-el, Branch Clerk of Court, Branch 3, Municipal Trial Court in Cities (MTCC), Bacolod City, testified that in 1994, an Information for Attempted Homicide in Criminal Case No. 94-16538 was filed against Rodolfo Castellano alias "Rodel Castellano" before Branch 3, MTCC, Bacolod City. Pursuant to a subpoena *duces tecum* sent to her, she brought the record of Criminal Case No. 94-16538 in court, and identified the Information^[17] for Attempted Homicide against Rodel Castellano,^[18] wherein the complainant was Ramil Hijapon,^[19] and she also identified the pictures^[20] of appellant Rodolfo Castellano. She further identified in court the herein appellant as the same Rodolfo Castellano who is the accused in the pending MTCC

case which was filed in court on June 15, 1994.^[21]

On the other hand, the appellant denounced the prosecution's allegation as a lie that he killed Ramil Hijapon. He put up the defense of alibi, asserting that he was in Cebu at the time the crime was committed; and that in July 1996 he was in Cebu because he delivered fighting cocks to Dax Villadelgado and stayed there up to the last week of August 1996; and that he then proceeded to Manila to also sell fighting cocks. He claimed that he was charged with killing Ramil Hijapon because he apprehended Ramil and got his gun which Ramil pointed at a certain Roberto "Bobby" Picuncillo in April 1992 since there was a gun ban. After calling the police, he gave the gun to SPO3 Rico Aksam. Thereafter, everytime he passed by the house of Ramil Hijapon, the latter and his family used to say to him that he was a traitor. He did not mind them, and Ramil Hijapon no longer spoke to him.^[22]

On cross-examination, appellant stated that he and Ramil Hijapon resided in the same purok, but he resided at Zone 3 while Ramil resided at Zone 5. His house was two (2) blocks away from Ramil's house. He did not know whether a case was filed against Ramil Hijapon for the alleged April 1992 incident after he forwarded Ramil's gun to the police; and he did not execute any affidavit. He was surprised why Ramil earlier charged him with Attempted Homicide for the shooting incident on March 3, 1994 and Murder in the instant case, insisting that he was in Cebu.^[23]

Dax Villadelgado, 18 years old, a first year college student, and resident of Tudtod Street, Mabolo, Cebu City, testified that he knew appellant who was introduced to him by his cousin, Jed Rojo, sometime in December 1995 when he was in high school. Appellant arrived in Cebu on July 21, 1996 and delivered fighting cocks; the payment therefor was due on July 29, 1996. Appellant continued to stay in Cebu after July 29 because Villadelgado invited him to his 18th birthday on August 14, 1996 while Villadelgado's mother also invited him to her birthday on August 20, 1996. Appellant stayed in Cebu up to the last week of August 1996, and then left for Manila. He was requested by Jed Rojo to testify for the appellant because he knew that appellant was with him (Villadelgado) when the crime was committed.^[24]

Josefa de Paula, 54 years old, testified that she knew the appellant and the victim, Ramil Hijapon, because they all came from Barangay Bata, Bacolod City. She resided at Purok Riverside while appellant and the victim were residents of Purok Pepsi. Purok Riverside and Purok Pepsi are separated by the national road. At around 8:00 o'clock in the evening of August 20, 1996, she was walking towards the house where she would attend a wake, and after passing the store of the victim Ramil Hijapon (about eight (8) to ten (10) meters away therefrom), she heard a gunfire. She looked back and saw a tall, slim person wearing a white T-shirt and maong pants who was still aiming his gun at the jalousie window of the house of Ramil for one or two (2) seconds. Then the assailant ran towards her direction allowing her to see his face; hence, she would recognize the assailant if she saw him. The assailant was not appellant Rodolfo Castellano. After the assailant ran towards her direction, she moved back while he proceeded on his way and she saw him tuck something in his waist. She stood in place for a while and then saw some persons going to the store of Ramil. She also went there briefly but later left for the wake when somebody stepped on her foot. She stayed for thirty (30) minutes at the wake. On her way home, she passed by the store of Ramil Hijapon and inquired about what happened; somebody told her that Ramil was shot. She peeped inside the store

from the jalousie window and saw blood. She just listened to the stories being told and then she went home.^[25]

After August 20, 1996, Josefa de Paula did not know about the instant case. She knew for the first time that appellant was the suspect in the killing of Ramil Hijapon during the last week of April 1997. She met Rodel's mother when she was distributing handbills for the May 12, 1997 barangay election. She greeted Rodel's mother who told her that Rodel was in prison because he was the suspect in the killing of Ramil Hijapon. She informed Rodel's mother that it was not Rodel who killed Ramil Hijapon.^[26]

Josefa de Paula knew the wife of the victim, but she did not talk to her about the incident of August 20, 1996 nor condole with the family of the victim. She did not attend the wake of Ramil Hijapon. She did not report to the police what she witnessed at the time of the shooting incident. She just volunteered to testify for the appellant as she went earlier to the defense counsel who told her to testify.^[27]

Roberto "Bobby" Picuncillo testified that he knew the appellant and the deceased, Ramil Hijapon, since they all resided at Purok Pepsi, Zone 5, Barangay Bata, Bacolod City. In March 1992, while he was on his way to the coffee shop of Loreto Bermoy, Ramil Hijapon called him and accused him of stoning his house, which he denied. Then Ramil Hijapon entered his house, while he proceeded toward the coffee shop of Loreto Bermoy. While walking towards the coffee shop, Ramil called him again and when he turned, Ramil was pointing a revolver at him. Appellant then happened to pass by and since he knew both of them, he just stood between them and got the revolver of Ramil after which he (Picuncillo) and appellant called the BAC-UP Police Station. When the police arrived, appellant turned over Ramil's revolver to Police Officer Rico Agsam. They were brought to the BAC-UP precinct and the incident was recorded. Thereafter, he and the appellant left the precinct while Ramil Hijapon stayed behind. He saw appellant in the morning of March 3, 1994, and also on August 20, 1996. Appellant who was in the business of selling fighting cocks and rice until August 20, 1996 used to sell his fighting cocks in Manila.^[28]

On June 11, 1997, the trial court rendered its Decision, the dispositive portion of which reads:

WHEREFORE, finding accused Rodolfo Castellano, alias Rodel, GUILTY beyond reasonable doubt of Murder punishable under Article 248 of the Revised Penal Code, as amended by Section 6 of Republic Act No. 7659, JUDGMENT is hereby rendered sentencing him to suffer RECLUSION PERPETUA, as well as the accessory penalty provided by law. He is likewise ordered to indemnify the heirs of Ramil Hijapon P50,000.00 for his death. Cost against accused.

Accused Rodolfo Castellano being detained in connection with the instant case, the period of his preventive imprisonment shall be credited in his favor and to be fully deducted from the service of his sentence even if penalized with reclusion perpetua (People vs. Corpus, 231 SCRA 480), provided he has agreed in writing to abide by the same disciplinary rules imposed upon convicted prisoners pursuant to Article 29 of the Revised Penal Code.