

EN BANC

[G.R. Nos. 134072-73, June 10, 2002]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
CONSTANCIO CANDIDO Y COLLARGA, ACCUSED-APPELLANT.**

DECISION

KAPUNAN, J.:

Accused-appellant Constancio Candido y Collarga was found guilty of murder aggravated by the use of an unlicensed firearm and sentenced to death in Criminal Case No. Q-94-58986^[1] in the Decision dated June 22, 1998 rendered by the Regional Trial Court, Branch 220, Quezon City. He was likewise found guilty of Violation of Presidential Decree No. 1866,^[2] as amended by Republic Act No. 8294,^[3] in Criminal Case No. Q-94-58985 and was sentenced to suffer the penalty of imprisonment of *prision correccional* in its maximum period. The dispositive portion of the decision reads:

WHEREFORE, in the light of the foregoing, the Court finds the accused Constancio Candido y Collarga GUILTY BEYOND REASONABLE DOUBT, as principal, of the crimes of Violation of Presidential Decree No. 1866, as amended by Republic Act No. 8294; and Murder qualified by treachery and aggravated by use of unlicensed firearm punishable under Article 248 of the Revised Penal Code, as amended by Section 6 of Republic Act No. 7659, in relation with (sic) Section 1 of Republic Act No. 8294, and accordingly sentences him to suffer the penalty of imprisonment of *PRISION CORRECCIONAL IN ITS MAXIMUM PERIOD* and a fine of FIFTEEN THOUSAND PESOS (P15,000.00) for violation of P.D. 1866, as amended, in Criminal Case No. Q-94-58985; and to suffer the penalty of DEATH with all its accessory penalties and to indemnify the heirs of the deceased Nelson Daras y Pueblo in the amount of FIFTY THOUSAND PESOS (P50,000.00), for murder in Crim. Case No. Q-94-58985 (sic); subject to the rule on successive service of sentence under Article 70 of the Revised Penal Code.

The Director of Metro Manila Rehabilitation Center, Camp Ricardo Papa, Lower Bicutan, Taguig, Metro Manila is hereby ordered to transfer the custody of the accused to the National Penitentiary, New Bilibid Prisons, Muntinlupa, Metro Manila, pending appeal.

The Branch Clerk of this Court is hereby directed to transmit the entire records of this case to the Supreme Court for automatic review.

SO ORDERED.^[4]

The relevant antecedents are as follows:

The information in Criminal Case No. Q-94-58986 for murder alleged:

That on or about the 9th day of October, 1994, in Quezon City, Philippines, the above-named accused, with intent to kill, with treachery and evident premeditation, did then and there, willfully, unlawfully and feloniously assault, attack and employ personal violence upon the person of one NELSON DARAS y PUEBLO, by then and there shooting the latter with a .38 caliber revolver hitting him on the different parts of his body, thereby inflicting upon said NELSON DARAS y PUEBLO mortal wounds which were the direct and immediate cause of his death, to the damage and prejudice of the heirs of said NELSON DARAS y PUEBLO.

CONTRARY TO LAW.^[5]

The information in Criminal Case No. Q-94-58985 for Violation of P.D. No. 1866, as amended, alleged:

That on or about the 9th day of October, 1994, in Quezon City, Philippines, the said accused without any authority of law, did then and there willfully, unlawfully and knowingly have in his possession and under his custody and control one (1) .38 cal. revolver Smith & Wesson "*paltik*" with Serial No. 453822 with three (3) live ammunitions and three (3) spent shells without first having secured the necessary license/permit issued by the proper authorities.

CONTRARY TO LAW.^[6]

During his arraignment, accused-appellant pleaded not guilty to both charges.^[7] Thereafter, joint trial of the cases ensued.

The prosecution's evidence consist of the (a) testimonies of (1) Perlita Baldoza, a cousin of victim Nelson Daras, and an eyewitness to the shooting incident; (2) SPO1 Wilfredo Red who apprehended the accused-appellant and confiscated the subject firearm from the latter; (3) SPO1 Gil J. Gregorio who investigated the case; (4) Ruben Aliaga, a "*peryante*," also an eyewitness to the shooting incident; (5) Dr. Bienvenido O. Muñoz, Medico-Legal Officer III, Medico-Legal Division, National Bureau of Investigation, who conducted the autopsy on the body of the victim and (b) documents consisting of (1) the Certification, dated March 22, 1995 of the Firearms and Explosive Office, PNPHQ, Civil Security Force Command, Camp Crame, showing that accused-appellant does not possess any authority or license from the government to possess the subject firearm; and (2) the Autopsy Report No. N-94-2046.

The prosecution sought to prove that at around ten-thirty in the evening of October 9, 1994, witness Perlita Baldoza who was at her stall in the *peryahan* (mini carnival) behind the Camelot Hotel at Scout Tuazon, Barangay South Triangle, Quezon City saw accused-appellant alighting from a taxi as if he was looking for somebody.^[8] She knew the accused-appellant because he was "an overseer" in the *peryahan*.^[9] The accused-appellant walked towards the victim and positioned himself behind him. Then, he immediately pulled out a gun and fired at the victim, hitting him in the

lower portion of the breast.^[10] The victim fell. Not satisfied, the accused-appellant came closer to the victim, then, fired at him twice hitting him once on the right side of his chest.^[11] Wasting no time, accused-appellant made his getaway and ran towards the direction of Scout Tuazon, Quezon City.^[12] With the help of one Dennis Guinto, witness Baldoza brought the victim to the Capitol Medical Hospital where he was declared dead on arrival.^[13]

Ruben Aliaga, a coin overseer in the "coin-throwing" game in the *peryahan*, was on duty the night the unfortunate incident took place and corroborated the testimony of witness Baldoza.^[14] He testified that he saw accused-appellant holding a gun ("a short gun") when the latter arrived at the *peryahan* and he saw him shoot the victim three (3) times. The victim had his back turned on the accused-appellant when the latter shot him from behind. After the shooting incident, he also helped in bringing the victim to the hospital where he was pronounced dead on arrival.^[15]

In the meantime, SPO1 Wilfredo Red and SPO1 Malang were on patrol duty in the area along Scout Tuazon Street, Quezon City when they heard three (3) successive shots fired.^[16] They went to the direction where the shots were fired and came upon the accused-appellant running away from the said direction. He was holding a gun.^[17] SPO1 Red fired a warning shot and introduced himself as a police officer and told the accused-appellant to surrender his gun^[18] but the latter did not heed the warning and instead, he poked the gun at SPO1 Red, then, he ran away.^[19] SPO1 Red chased accused-appellant. He was able to subdue him. He confiscated accused-appellant's gun^[20] and noticed that the subject firearm was a homemade revolver, with three (3) live ammunition and three (3) spent shells.^[21] When shown the subject gun with Serial No. 453822 in court, SPO1 Red identified the same as the one he confiscated from the accused-appellant.^[22]

Dr. Bienvenido O. Muñoz, Medico-Legal Officer III of the Medico-Legal Division of the National Bureau of Investigation conducted an autopsy of the victim and made the following postmortem findings, *viz.* :

Pallor, conjunctivae and integument.

Abrasions, reddish brown: nasal bridge, 0.5 x 1.0 cm.; chin, across midline, 3.0 x 7.0 cm.; thigh, left, lower third, anterior, 0.7 x 5.0 cm.

Lacerated wound, forehead, across midline, 3.0 cm.

Gunshot wounds:

1. Entrance, ovaloid, 0.8 x 1.0 cm., with a contusion collar widest at its upper border. Located at the anterior chest, level of second intercostal space, right, 11.0 cm. from anterior median line, 134.0 cm. above right heel. Directed backward, downward and from right to left, into the right thoracic cavity, perforating the lower lobe of right lung then fracturing the body of 7th thoracic vertebra, into the posterior thoracic wall, where a bullet was lodged and recovered, 2.5 cm. to the left of posterior median line, 120.0 cm. above the left heel;

2. Entrance, ovaloid, 0.9 x 1.0 cm., with a contusion collar widest at its lower border. Located at the back, level 10th intercostal space, left, 16.0 cm. from posterior median line, 109.5 cm. above left heel. Directed forward, upward and medially, perforating the diaphragm and spleen and making an exit wound, irregular, 2.0 x 1.0 cm., chest, anterior, level of 7th intercostal space, left, 7.0 cm. from anterior median line, 112.0 cm. above left heel.

Hemothorax, right-950 c.c.; left-750 c.c.

Hemoperitoneum-600 c.c.

Brain and other visceral organs, pale.

Stomach-empty.[23]

In his testimony, Dr. Muñoz declared that he found two (2) gunshot wounds in the victim's body. One was located at the front portion of the chest and the other one was located at the back. He declared the two (2) fatal gunshot wounds were the cause of death of the victim.[24] When asked about the distance of the muzzle of the gun used by the accused-appellant to the body of the victim when he fired it, Dr. Muñoz said that the distance was probably more than 24 inches because of the absence of any of the characteristics of a close range fire like smudging or burning.[25] As to the position of the victim *vis-a-vis* the assailant when shot, particularly the first shot, which was gunshot wound No. 2, Dr. Muñoz said that the assailant was at the back of the victim and more to the left.[26] With respect to gunshot wound No. 1, he said that the assailant and the victim were probably both standing and that the assailant was in front and to the right of the victim and the victim was standing on a lower level than the assailant because the trajectory of the bullet was downward and from right to left.[27]

It was also proven that the gun which took the life of the victim was not properly registered as required by law. P/Senior Inspector Edwin Roque of the Records Branch of the Philippine National Police issued a certification stating that the 0.38 caliber revolver recovered from the accused-appellant was not a licensed firearm and that accused-appellant was not a licensed or registered holder of any kind of firearm.[28]

The accused-appellant was presented as the sole witness for the defense. He admitted the killing but claimed that he did so in self-defense. He testified that at about six o'clock in the evening of October 9, 1994, he reported for work as an overseer in the *peryahan* of one Tony Baguio.[29] At around ten-thirty in the evening of that day, he closed one of the stalls in the *peryahan* because the owner of that stall did not arrive.[30] Immediately thereafter, the victim approached him and angrily asked why he closed the stall. Without waiting for him to answer, the victim boxed him on his left ear,[31] then asked the accused-appellant if he was going to fight back.[32] Suddenly, the victim drew his gun. Accused-appellant grappled with the victim for the possession of the gun. In the course of the struggle, the gun fired hitting the victim on the left side of his stomach.[33] After the first shot was fired, the struggle for the possession of the gun continued. Accused-appellant then tried to raise the gun but it fired again twice, hitting the victim at his right shoulder.[34] At this point, somebody struck his neck causing him to move backward. A

commotion ensued.^[35] Thereafter, a policeman (whom the accused-appellant later identified as SPO1 Wilfredo Red) poked a gun at him and ordered him to raise his hands, then frisked his body and was able to get P9,000.00 and \$50.00 from him.^[36] The policeman then boarded him on a jitney and brought him to Camp Karingal.^[37]

In his brief, the accused-appellant ascribed the following errors to the court *a quo*, to wit:

I

THE COURT A QUO ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIME OF MURDER.

II

THE COURT A QUO ERRED IN APPRECIATING THE QUALIFYING CIRCUMSTANCE OF TREACHERY DESPITE FAILURE OF THE PROSECUTION TO ESTABLISH THE SAME.

III

THE COURT A QUO GRAVELY ERRED IN TOTALLY DISREGARDING THE VERSION OF THE ACCUSED-APPELLANT THAT HE WAS MERELY ACTING IN SELF-DEFENSE.

IV

THE COURT A QUO ERRED IN NOT APPLYING THE PROVISION OF RA 8294 AND IN CONVICTING THE ACCUSED-APPELLANT FOR TWO SEPARATE OFFENSES.^[38]

The accused-appellant assails his conviction in this automatic review and contends that the trial court has gravely erred in convicting him of murder aggravated by the use of an unlicensed firearm and sentencing him to death on the basis of the prosecution's evidence.

The Court affirms the judgment of conviction but reduces the sentence of death to *reclusion perpetua*.

Having admitted killing the victim, the accused-appellant has the burden of proving that he acted in self-defense by establishing (1) unlawful aggression on the part of the deceased; (2) reasonable necessity of the means employed by him to prevent or repel the aggression; and (3) lack of sufficient provocation on his part in defending himself.^[39] Accused-appellant has failed to discharge this burden.

The version of accused-appellant of what transpired that night is simply incredible. He asserted that at around ten-thirty in the evening of October 9, 1994, he closed one of the stalls in the *peryahan* when the victim approached him and angrily asked why he closed the stall. Then, without waiting for his answer, the victim boxed him on his left ear.^[40] Surprised and irritated, he asked the victim why he boxed him.