

## FIRST DIVISION

[ G.R. No. 139790, July 04, 2002 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
GEORGE ASALDO Y CELESTIAL, ACCUSED-APPELLANT.**

### D E C I S I O N

**YNARES-SANTIAGO, J.:**

This is an appeal from the decision dated December 29, 1998 of the Regional Trial Court, Branch 56, of Libmanan, Camarines Sur, in Criminal Case No. 1834, finding George Asaldo guilty beyond reasonable doubt of the crime of murder and sentencing him to suffer the penalty of *Reclusion Perpetua* while acquitting his co-accused Romeo Atag and Mariano Soriano for insufficiency of evidence.

The accusatory portion of the information reads:

That on or about the 5<sup>th</sup> day of march, 1995, in Barangay Sta. Cruz, Cabusao, Camarines Sur, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill, with treachery, evident premeditation and taking advantage of superior strength, conspiring, confederating and mutually helping one another, did then and there willfully, unlawfully and feloniously kidnap one Vicente Alarcon y Cervantes and taken at Barangay Sta. Cruz, Cabusao, Camarines Sur, and while thereat, said victim was hogtied, and then stabbed with bladed instruments, inflicting upon him mortal wounds on the different parts of his body, which caused his instantaneous death, to his heirs damage and prejudice in such amount as may be proven in court.

ACTS CONTRARY TO LAW.<sup>[1]</sup>

When arraigned, the three accused assisted by counsel pleaded not guilty to the crime charged; waived pre-trial and prayed for an immediate trial on the merits.

The evidence for the prosecution tends to establish the following facts:

Nineteen year-old Vicente Alarcon, the fifth child of Jose Alarcon, was last seen alive by his father on March 4, 1995 at around 3:00 p.m. Vicente asked permission from him that he was going to attend the “*pabasa*” in Dominorog with Eric Olleta.<sup>[2]</sup> The following day, only Eric Olleta and Rafael Terillos,<sup>[3]</sup> Jose’s son-in-law, came home and told the latter that his son had been stabbed.

On March 5, 1995, a dead body was found by residents of Barangay Sta. Cruz, Cabusao, Camarines Sur, floating on the creek with his back on the water surface and both his arms and feet were tied with “*lupnis*” (nipa stalk). Police authorities who investigated the crime found a voter’s affidavit inside the deceased’s wallet in the name of Vicente Alarcon.<sup>[4]</sup> The victim sustained four stab wounds on the side of the right

neck area, and cuts in the left eyebrow and on the base of the neck. Dr. Geonesto Ramos, who conducted the post-mortem examination found the following:

FINDINGS:

- The cadaver was found in Rigor Mortis, the hands were bound with nipa leaves beyond the back;
- Both lower extremities were bound with nipa leaves at the ankle area;
- There is an avulsion wound on the terminal portion of the left eyebrow measuring 2x2 cm;
- There are multiple stab wound on the right neck area near the right sternoclavicular joint namely:
  - a.) a 2x2 cm. stab wound with sharp extremities clean cut edges 22 cm. deep downward and medial in direction reaching the right lung with severed blood vessels;
  - b.) two 2x2 cm. stab wound with sharp extremities, clean borders directed downward reaching the underlying muscles;
  - c.) 2x2 cm. stab wound just below the right midclavicular area, downward in direction reaching the muscles;
  - d.) there is a 4x1 cm. laceration the base of the neck right area near the right sternoclavicular joint, which is superficial;
  - e.) there is also a 2 x2 cm. stab wound at the base of the right neck area with sharp extremities clean edges downward in direction 6 cm. deep reaching right scapular area.

The PNP of Calabanga, Camarines Sur informed the PNP of Cabusao that a certain Baltazar Millares surrendered to the police saying that he can shed light on the circumstances which led to the death of Vicente Alarcon.

When he was presented on the stand as prosecution witness, Millares narrated in detail how Vicente Alarcon died in the hands of the accused: On March 5, 1995 at about 2:00 a.m., he arrived in Dominorog, Calabanga, Camarines Sur where the “*pabasa*” was taking place while George Asaldo, Romeo Atag and Mariano Soriano were already there. Then, a drunk man from Balatasan arrived together with Vicente Alarcon. George Asaldo brought the drunk man to the backyard where he was taken by the barangay tanod. Thereafter, Millares and the three accused went inside the house of Antonio Belencio to eat. Thereafter, they proceeded to the house of Elena Siping where they drank gin. Eric Olleta, Vicente Alarcon and a certain Terillos passed by and Asaldo offered them a drink. After Olleta, Alarcon and Terillos left, Asaldo told his companions, Atag, Soriano and Millares that they will waylay the three. They waited for several hours, but the three did not return as they were resting at the outpost. Asaldo and Atag proceeded to the outpost, which was 20 meters away. Millares and Soriano followed after a little while, and saw Asaldo point a toy gun at the nape of Vicente Alarcon. Asaldo ordered Soriano to hold Alarcon. Soriano drew a fan knife and pointed it at the back of Alarcon.

George Asaldo turned to Eric Olleta who was lying on the ground and stabbed him. Asaldo told Alarcon, "if you will not come, you will be killed," to which Alarcon replied "if you will not kill me, I will go with you." The group left Terillos and the wounded Olleta at the outpost and went back to the house of Asaldo. From there, they proceeded on foot to Pagao, an adjoining barangay. It was 4:00 in the morning when they got there. They boarded a motor boat which Asaldo rented from a certain Fernando and they proceeded to Sta. Cruz, Cabusao. After alighting from the boat, they walked a few meters then Asaldo told Vicente Alarcon to get down. He told Atag and Soriano to tie Alarcon's hands and feet with a "*lupnis*." Asaldo stabbed Alarcon four times. He threw Alarcon into the creek. Thereafter, they went to Kalampinay where they worked in a farm. Millares was later fetched by a brother of Asaldo and was brought to Dominorog. Then he surrendered to the police.<sup>[5]</sup>

Accused-appellant denied the charge against him. He claimed that he had been a resident of Kalampinay, Sipocot, Camarines Sur since he was a 12 year old fourth grader. On March 5, 1995, he worked in San Bernardino, Calabanga, Camarines Sur with his brother. They sawed lumber there and when he went home to Kalampinay he found out that his child had a fever. He instructed his wife to bring their child to Mercedes, Camarines Norte, where his mother-in-law resides. On March 7, he fetched them at Mercedes.

He further averred that he seldom went to Dominorog, although his brother lives there. He denied being with the two other accused and Baltazar Millares on March 5, 1995 at the house of a certain Belencio at Dominorog, Calabanga. Neither was he with them on any other occasion. He likewise denied having met Alarcon or Eric Olleta, or having a drinking spree, or having taken Alarcon to Pagao, then to Sitio Ferry, Sta. Cruz, Cabusao, Camarines Sur. He alleged that he did not stab or hogtie Alarcon.

He argued that he was accused of the crime because the family of Millares had a grudge against him after he and the latter's first cousin, Nestor Asoro, had a fight over the interchanging of "*himolo*" (palay harvest share) where he defeated Asoro.<sup>[6]</sup>

Rolando Sibuc corroborated accused-appellant's alibi that George Asaldo was working with him at a farm in Kalampinay, Sipocot, Camarines Sur from seven in the morning to five in the afternoon of March 3, 4, 5, 6 and 7. Asaldo was operating the hand tractor.<sup>[7]</sup>

The trial court found accused-appellant guilty of the crime charged on the basis of the eyewitness accounts of Baltazar Millares who positively identified him as the assailant. The trial court found Millares' testimony as positive, consistent, straightforward, and clear.

The dispositive portion of the decision dated December 29, 1998 reads as follows:

WHEREFORE, in view of the foregoing considerations, this Court finds the accused, GEORGE ASALDO y CELESTIAL, GUILTY beyond reasonable doubt of the crime of MURDER under Article 248 of the Revised Penal Code as amended by RA 7659 and hereby sentences him to Reclusion Perpetua to pay the heirs of the victim, Sixty Thousand Pesos (P60,000.00) for the fact of death, and Ten Thousand Pesos (P10,000.00) as moral damages and to pay the costs of this suit. There being insufficient evidence to hold accused ROMEO ATAG y SALVADOR, and MARIANO SORIANO y AGUIRRE liable for the crime, they are ACQUITTED of the same. No pronouncement as to costs. It appears from the record that they are presently