

## **THIRD DIVISION**

**[ G.R. No. 138233, January 18, 2001 ]**

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RONIL ABUNDO Y CALVO; BRIXCIO CALVO (AT LARGE); HENRY AGO (DECEASED); AND ROLANDO BOLAMBOT Y VELASCO, ACCUSED, RONIL ABUNDO Y CALVO AND ROLANDO BOLAMBOT Y VELASCO, ACCUSED-APPELLANTS.**

### **D E C I S I O N**

**GONZAGA-REYES, J.:**

This is an appeal from the Decision<sup>[1]</sup> dated January 6, 1998 of the Regional Trial Court of Butuan City, Branch 4, in Criminal Case No. 7157, finding accused-appellants Ronil Abundo y Calvo and Rolando Bolambot y Velasco guilty beyond reasonable doubt of the crime of Murder.

On January 27, 1997, accused Ronil Abundo y Calvo, Rolando Bolambot y Velasco, Brixcio Calvo, and Henry Ago were charged with the crime of Robbery with Homicide in an Information which reads, to wit:

"That on or about the 26<sup>th</sup> of August, 1996, at 2:30 o'clock in the afternoon, more or less, at Sitio Ampay, San Antonio, RTR, Agusan del Norte, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and mutually helping with one another, with intent to gain, armed with a .38 caliber revolver and daggers/hunting knives and by means of force and violence, did then and there willfully, unlawfully and feloniously take, steal, and carry away one (1) unit chainsaw bearing Serial No. 12810247, Stihl brand worth P34,000.00 belonging to Alberto Martinez, without his knowledge and consent and against his will, to the damage and prejudice of the said Alberto Martinez.

That on the occasion of said robbery and for the purpose of enabling them to take, steal or carry the above-mentioned article, said accused, in furtherance and in pursuance of their conspiracy, did then and there, taking advantage of their superior strength and with intent to kill, treacherously attack, assault and employ personal violence upon Alberto Martinez and Ramil Eugenio with the use of one (1) .38 caliber revolver, and bladed weapons with which they conveniently armed themselves, inflicting mortal wounds on different parts of their bodies, directly causing their death.

CONTRARY TO LAW".

Upon arraignment, accused Ronil Abundo and Rolando Bolambot entered a plea of not guilty to the crime charged, while accused Brixcio Calvo and Henry Ago remained at large.

During the trial, the prosecution presented the following witnesses: (1) Allan Martinez, an eyewitness to the killing; (2) Dr. Wilfredo Mallonga, the Municipal Health Officer who conducted the post-mortem examination on the corpses of the victims; and, (3) Bernarda Martinez, the widow of victim Alberto Martinez.

Allan Martinez testified that on August 26, 1996 at about 7:00 in the morning, he went to the house of his uncle, Alberto Martinez, who hired him to haul lumber in Sitio Ampay, Barangay San Antonio, Municipality of Remedios Trinidad Romualdez (RTR), Agusan del Norte. Allan and Alberto, together with Antonio Martinez, Ramil Eugenio, Jessie Sambaan, and Jerry Deloso, left for Sitio Ampay, bringing with them a chainsaw, ropes, and other things they needed for cutting and hauling lumber. The group arrived at Sitio Ampay at about 10:00 in the morning of the same day, and started felling a tree and cutting the same into pieces using a chainsaw. At about 2:00 in the afternoon, the group began hauling the lumber.<sup>[2]</sup> Thirty minutes later, while the members of the group were spread out, Allan Martinez saw four men approaching Alberto Martinez and his son-in-law Ramil Eugenio who were at that time connecting the chain of the chainsaw. Allan recognized the four men as Ronil Abundo, Rolando Bolambot, Brixcio Calvo and Henry Ago.<sup>[3]</sup> Abundo suddenly shouted "Dapa! Taas ang kamot!"<sup>[4]</sup> (Drop to the ground! Raise your hands!) and immediately shot Alberto Martinez who was in a squatting position facing Ramil Eugenio.<sup>[5]</sup> Allan slowly hid himself behind the "mote-mote" vines, while his three other companions ran away.<sup>[6]</sup> From his hiding place which was merely two and a half (2 ½) meters away from the crime scene,<sup>[7]</sup> Allan saw Alberto Martinez "roll over" after being hit by the bullet "somewhere in his right eye".<sup>[8]</sup> Abundo then followed Alberto and stabbed him.<sup>[9]</sup> Meanwhile, accused Rolando Bolambot began stabbing Ramil Eugenio, while Henry Ago and Brixcio Calvo served as "look-outs".<sup>[10]</sup> After seeing Bolambot stab Ramil three times, Allan slowly crawled out of his hiding place and headed towards the "poblacion" in San Antonio.<sup>[11]</sup> He went to the house of Alberto Martinez and told Cristina, the daughter of Alberto and wife of Ramil Eugenio, about the killings, but did not reveal the identities of the assailants.<sup>[12]</sup> Three days later, Allan Martinez disclosed to Bernarda Martinez, the wife of Alberto, that the killers of her husband and son-in-law are Ronil Abundo, Rolando Bolambot, Brixcio Calvo and Henry Ago.<sup>[13]</sup>

Dr. Wilfred Mallonga, the Municipal Health Officer who conducted the post-mortem examination on the corpses of the victims, testified that Alberto Martinez sustained three stab wounds and one gunshot wound,<sup>[14]</sup> while Ramil Eugenio sustained seven stab wounds, six of which were located at the back.<sup>[15]</sup> He further testified that the gunshot wound sustained by Alberto (wound no. 4), located at the right side of his temple, was directed "slightly downward" and could have come "from above" the victim,<sup>[16]</sup> thus corroborating the testimony of Allan Martinez as to the direction and location of the gunshot wound inflicted by Ronil Abundo on Alberto.

Bernarda Martinez testified that at 5:00 in the afternoon of August 26, 1997, she was on her way home from Cabadbaran when she met her daughter Cristina along

the road, and was told by the latter that Alberto Martinez and Ramil Eugenio were still in Sitio Ampay, and that their chainsaw was stolen.<sup>[17]</sup> Bernarda went to the RTR police station, but was denied assistance, so she went to the detachment of the CAFGU where she was assisted by a certain Rodrigo Calvo.<sup>[18]</sup> Calvo accompanied Bernarda back to her house where they found Allan Martinez, Jessie Sambaan and accused Ronil Abundo.<sup>[19]</sup> Bernarda requested Calvo and the latter three to go to Sitio Ampay to find out what happened to her husband and son-in-law. At 5:00 am the next day, Bernarda was presented with the dead bodies of the victims. Three days after the incident, Bernarda was informed by Allan Martinez as to the identities of the assailants.<sup>[20]</sup>

For their part, the accused-appellants Ronil Abundo and Rolando Bolambot interposed denial and alibi.

Abundo testified that on August 26, 1996, he was at the CAFGU detachment in Barangay San Antonio, RTR, Agusan del Norte, from 6:00 in the morning until 4:00 in the afternoon when Bernarda Martinez came and asked his assistance in rescuing Alberto Martinez and Ramil Eugenio who were held hostage by unidentified armed men in Sitio Ampay.<sup>[21]</sup> Abundo told Bernarda that he would just meet her at her house as soon as he is relieved from duty.<sup>[22]</sup> After Bernarda left, Allan Martinez and Barangay Chairman Virgilio Dawirao arrived and likewise sought Abundo's help in rescuing Alberto and Ramil.<sup>[23]</sup> The three of them, together with one Rodrigo Calvo, went to the house of Bernarda. Later, Abundo, Allan, and two other persons went to Sitio Ampay where they discovered the dead bodies of Alberto and Ramil lying on the ground. <sup>[24]</sup>

Accused Bolambot also took the witness stand, and testified that on the day of the commission of the crime, he was working as a carpenter at the house of Flora Ago, the mother of his co-accused Henry Ago, from 7:00 to 11:00 in the morning, and from 1:00 to 4:00 in the afternoon.<sup>[25]</sup> This was corroborated by the testimony of defense witness Flora Ago.<sup>[26]</sup>

After trial, the court *a quo* rendered judgment dated January 6, 1998, the dispositive portion of which reads:

"WHEREFORE, the Court finds the evidence of the prosecution insufficient to prove the charge of robbery with homicide as it has not conclusively proven that the primary object of the accused in committing the crime was robbery. The Court, however, finds accused Ronil Abundo y Calvo and Rolando Bolambot y Velasco guilty beyond reasonable doubt of the crime of MURDER defined in Art. 248 of the Revised Penal Code, as amended by Republic Act No. 7659 qualified by treachery and accordingly sentences each of the accused to suffer the penalty of imprisonment of from twenty (20) years to Forty (40) years of *reclusion perpetua* together with the accessory penalties provided for by law.

"They shall be imprisoned at the Davao Prison and Penal Farm at Panabo, Davao del Norte and entitled to the benefits of their preventive imprisonment crediting in the service of their sentence the full time during which they have undergone preventive imprisonment if they agree

voluntarily in writing to abide by the same disciplinary rules imposed upon convicted prisoners conformably with Art. 29 of the Revised Penal Code, as amended.

"Accused Ronil Abundo y Calvo is ordered to indemnify the heirs of Alberto Martinez the amount of P50,000.00. Accused Rolando Bolambot y Velasco is likewise ordered to indemnify the heirs of Ramil Eugenio the same amount of P50,000.00. In addition, both accused are hereby ordered to pay *in solidum* the amount of Sixteen Thousand Pesos (P16,000.00) representing burial expenses and expenses incurred during the 9-day wake as well as the amount of P5,300.00 representing funeral services.

"The case against accused Henry Ago and Brixcio Calvo are ordered placed in the archives until the above-named accused who are still at large shall have been arrested. Let warrants for their arrest be issued furnishing the lead agencies of the government tasked with the enforcement of the law copy of the warrants.

"IT IS SO ORDERED."<sup>[27]</sup>

On February 3, 1998, the court *a quo* issued an Order amending its earlier Decision which inadvertently omitted the testimony of Rolando Bolambot, and declared, thus:

"xxx xxx xxx

"If the Court considers this testimony of Rolando Bolambot, which the court failed to locate at the time it was preparing the decision because the transcript of stenographic notes were not properly marked, the said testimony cannot alter or modify the finding of the Court that the said accused are guilty as found by the Court."<sup>[28]</sup>

Hence, this appeal where the accused-appellants raise the following assignment of errors:

### **ASSIGNMENT OF ERRORS**

THE TRIAL COURT ERRED:

#### **I.**

IN NOT RULING THAT IT WAS PHYSICALLY IMPOSSIBLE FOR THE ACCUSED-APPELLANTS RONIL ABUNDO AND ROLANDO BOLAMBOT TO BE AT THESCENE OF THE CRIME AT SITIO AMPAY, SAN ANTONIO, RTR AND PARTICIPATE IN THE KILLING OF ALBERTO MARTINEZ AND RAMIL EUGENIO AT 2:30 O'CLOCK P.M., 26 AUGUST 1996 SINCE RONIL ABUNDO HAD BEEN AT THE DETACHMENT CHECKPOINT, AT THE POBLACION OF SAN ANTONIO 6:00 A.M. TO 4:00 O'CLOCK P.M. THAT SAME DAY SERVING AS CAFGU, AND ROLANDO BOLAMBOT HAD WORKED AS CARPENTER ON THE HOUSE OF FLORA AGO SITUATED ONE (1) KILOMETER FROM THE POBLACION OF SAN ANTONIO FROM 7:00 O'CLOCK A.M. TO 4:00 O'CLOCK P.M. WITH BREAK 11:00 O'CLOCK A.M. TO 1:00 O'CLOCK P.M. WHEN RESUMED UP TO 4:00 O'CLOCK P.M. SAME

DAY.

II.

IN RULING THAT LONE EYE-WITNESS ALLAN MARTINEZ IS ALLEGEDLY A CREDIBLE WITNESS.

III.

IN RULING THAT ALLAN MARTINEZ ALLEGEDLY SAW ALBERTO MARTINEZ AND RAMIL EUGENIO BEING KILLED 2:30 P.M. 26 AUGUST 1996 AT AMPAY, SAN ANTONIO, RTR AND THE ASSAILANTS ALLEGEDLY WERE RONIL ABUNDO AND ROLANDO BOLAMBOT, TOGETHER WITH HENRY AGO AND BRIXCIO CALVO.

IV.

IN RULING THAT ALLAN MARTINEZ POSITIVELY IDENTIFIED THE ACCUSED-APPELLANT RONIL ABUNDO AND ROLANDO BOLAMBOT TOGETHER WITH OTHER ACCUSED HENRY AGO AND BRIXCIO CALVO AS THE ASSAILANTS.

V.

IN RULING THAT ALLEGED EYE-WITNESS ALLAN MARTINEZ DID NOT HAVE ANY EVIL MOTIVE, BIAS OR MALICE IN TESTIFYING AGAINST ACCUSED-APPELLANTS RONIL ABUNDO AND ROLANDO BOLAMBOT AND THE OTHER TWO ACCUSED HENRY AGO AND BRIXCIO CALVO, AND IN POINTING THEM AS KILLERS.

VI.

IN NOT VACATING AS NULL AND VOID THE CHALLENGED DECISION OF 6 JANUARY 1998 CONVICTING THE ACCUSED-APPELLANTS ABUNDO AND BOLAMBOT HEREIN BUT MERELY AMENDING IT FOR MANIFEST LACK OF DUE PROCESS BY THE ORDER DATED 3 FEBRUARY 1998 IN VIOLATION OF SECTION 1, ARTICLE III, 1987 CONSTITUTION BECAUSE IT OMITTED BY NEGLIGENCE OF THE COURT TO TAKE INTO ACCOUNT IN THE MAKING OF THE SAID DECISION THE TESTIMONY OF ROLANDO BOLAMBOT IN THE TRIAL ON 18 JULY 1997 (RECORDS) WHOM THE TRIAL COURT WRONGLY BELIEVED DID NOT TESTIFY WHEN IN TRUTH AND IN FACT HE DID TESTIFY ON 18 JULY 1997.

VII.

IN UNDULY CURTAILING THE RIGHT OF THE ACCUSED-APPELLANTS RONIL ABUNDO AND ROLANDO BOLAMBOT THROUGH THEIR COUNSEL TO CROSS-EXAMINE PROSECUTION WITNESSES ALLAN MARTINEZ AND BERNARDA MARTINEZ AND IN UNJUSTLY DEPRIVING ACCUSED-APPELLANTS OF THEIR RIGHT TO BE ASSISTED BY THE UNDERSIGNED COUNSEL IN THE OFFER AND INITIAL PART OF THE DIRECT TESTIMONY OF BERNARDA MARTINEZ BY PROVINCIAL PROSECUTOR GODOFREDO