

SECOND DIVISION

[G.R. No. 126117, February 21, 2001]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
MARLON ZUNIEGA ALIAS "NONOY," ACCUSED-APPELLANT.**

D E C I S I O N

DE LEON, JR., J.:

Before us on appeal is the Decision^[1] of the Regional Trial Court of Negros Oriental, Branch 38, Dumaguete City in Criminal Case No. 9950, convicting the accused-appellant, Marlon Zuniega a.k.a. "Nonoy," of the crime of murder.

In an Information^[2] dated September 18, 1991, the appellant was charged with the crime of murder committed as follows:

"That on November 18, 1987 at about 9:00 o'clock in the evening more or less at Barangay Alangilan, Sta. Catalina, Negros Oriental, Philippines and within the jurisdiction of this Honorable Court, the above-named accused with intent to kill and treachery did, then and there willfully, unlawfully and feloniously shoot Napoleon Aujero three (3) times, with the use of a carbine rifle with which the accused was then armed and provided, thereby inflicting upon the victim gunshot wounds which caused the latter's immediate death.

Contrary to Article 248 of the Revised Penal Code."

Arraigned on October 7, 1991, accused-appellant Marlon Zuniega, assisted by counsel, pleaded NOT GUILTY.^[3] Thereafter, the trial ensued.

The prosecution's lone eyewitness, Felixnito Lasota,* a family man with three (3) children and a resident of Barangay Alangilan, Sta. Catalina, Negros Oriental, testified that he knows the victim, Napoleon Aujero (Napoleon, for brevity) and the appellant. The appellant is his relative and neighbor whose house is adjacent to his house and separated only by a fence. At about 9:00 o'clock in the evening of November 18, 1987, the appellant paid him a visit and asked if he could accompany him to the house of Napoleon, which is about 300 meters away from his house. The appellant did not tell him the purpose of their visit. While they were walking towards the house of Napoleon, he noticed that the appellant carried with him his service carbine rifle that was issued to him as a member of the Civilian Home Defense Force (CHDF) of their place. When they arrived at the place of Napoleon, he was asked by the appellant to wait beside the road in front of the house of Napoleon which is about 12 meters from where he stood. While thereat, he saw Napoleon seated alone on a chair, in a diagonal front position, inside the porch of his house. When the appellant was about three (3) meters away from Napoleon, he saw the appellant fire his gun three (3) times at Napoleon who fell down from his chair to the floor. He was

able to recognize the identity of the appellant because of the electric bulb that illuminated the house of Napoleon. Then, the appellant fetched him from the place where he stood and they both proceeded back towards his (Felixnito's) house.

When he asked the appellant why he killed Napoleon, the appellant answered that Napoleon committed something wrong but the latter did not elaborate. No other conversation took place between him and the appellant except that the appellant also told him not to tell anybody about the incident so that nothing untoward would happen to him. Afterwards the appellant left him. He said that he did not report the incident to the police nor to anybody else because of this threat of the appellant. Not even his wife knew about it. Since then he avoided the appellant because he was frightened of what he had witnessed. It was only after he learned of the arrest of the appellant by the army that he voluntarily reported the incident to the police on August 31, 1991.^[4]

Jose Lacpao, the Barangay Captain of Alangilan, Sta. Catalina, Negros Oriental and also the team leader of the Civilian Armed Forces Geographical Unit (CAFGU) in that barangay, testified that the appellant was under him as a member of the CAFGU from 1987 up to the time that Napoleon Aujero was shot, and that, the appellant, as such member of the CAFGU, was issued a carbine rifle. He said that he was in Dumaguete City on November 18, 1987 and arrived only five (5) days after the subject shooting incident in said Barangay Alangilan. He only came to know of the death of the victim after he attended a conference on August 28, 1991 at the headquarters of the military at the house of Leonardo Quinicot* where the appellant admitted having killed the deceased Napoleon. The conference was in connection with the drive of the military to have unregistered firearms in the area registered with them at their temporary headquarters. It was he and Capt. Batiancila who ordered Corporals Mardonio and Cañete to pick up the appellant even without a warrant of arrest because the purpose was only for the appellant to attend the conference. Other persons present at the conference were Barangay Secretary Tiburcio and army officers Capt. Batiancila, Corporals Mardonio and Cañete and the owner of the house, Leonardo Quinicot.^[5]

Jose Lacpao also admitted that he is facing two (2) criminal charges, that is, one for the death of Rev. Fr. Quemada which is pending before the Regional Trial Court of Dumaguete City, Branch 40, and the other is for arson wherein a certain Engr. Abugan is the complainant and herein appellant is the witness who has not yet testified against him in those two (2) cases even up to the time when he (Jose Lacpao) testified in this case. He denied that Capt. Batiancila struck appellant with a basket and a paddle, or that the Captain made accused-appellant crawl around the Quinicot residence.^[6]

Capt. Leonardo Batiancila, the Officer-in-Charge of the Special Operations Team under the Civil Military Operation of the 37th Infantry Battalion in Barangay Alangilan, Sta. Catalina, corroborated the testimony of Barangay Captain Jose Lacpao that his team conducted an operation in the area by requiring the residents there to register their unlicensed or unrecorded firearms, if any, so that the military could determine the number of residents in the area who have firearms. He said that he first met the appellant on August 27, 1991 at their temporary headquarters after the appellant was invited to shed light on a report that he possessed a homemade shotgun. On August 28, 1991, he met the father of the appellant,

Barangay Councilman Restituto Zuniega, who reported to him that the appellant had threatened to shoot him for his alleged information given to the military that the appellant possessed an unlicensed firearm. To settle this apparent conflict between appellant and his father, Restituto Zuniega, Capt. Batiancila verbally directed his men to invite the appellant to their headquarters. The appellant came and surrendered a pistolized homemade shotgun. Capt. Batiancila declared that it was also at this occasion that the appellant confessed that he caused the death of Napoleon on November 1987 when he shot the latter with his service caliber 30 M-1 Carbine Rifle. In the evening of said date, Capt. Batiancila turned over the custody of the appellant to the 36th PC Command at Nagbagang, Sta. Catalina for proper disposition on account of the appellant's confession including the appellant's illegal possession of firearms.^[7]

Dra. Rosita Muñoz, Municipal Health Officer of Sta. Catalina, Negros Oriental, testified that she issued the Death Certificate of the victim without having seen or examined the body of the deceased; and that the entries in the death certificate was just furnished by Eppie Paz Minasalbas who is the daughter of the deceased, that is why she could not tell the kind of gun used in killing the victim.^[8]

Franco Aujero, the son of the victim who resides at Daro, Dumaguete City, testified that, upon being informed by his brother that their father died, he immediately went to Alangilan, Sta. Catalina, Negros Oriental. When he saw the remains of his father he noticed that the body of his father had bullet wounds on the chest, another on the right arm and one on the right portion of his back.^[9]

The appellant interposed the defense of denial and alibi.

The appellant, Marlon Zuniega, testified that in the evening of November 18, 1987, he slept at the house of Gloria Aliabo in Barangay Bonawon, Siaton, Negros Oriental which is about 18 kilometers away from Barangay Alangilan. He left Barangay Alangilan at about 3:30 o'clock in the afternoon of November 18, 1987 on board a Ceres Bus to deliver four (4) sacks of bananas to Gloria Aliabo. Upon his arrival at Barangay Bonawon, Siaton, Negros Oriental at about 4:00 o'clock in the same afternoon, he and Gloria Aliabo's husband lifted the four (4) sacks of bananas, one at a time, from the road following a foot path to Gloria Aliabo's house which is located about 500 meters away from the road. It was only on the following day, at around 9:00 o'clock in the morning, that he arrived at Alangilan and learned about the death of Napoleon Aujero.

Gloria Aliabo, Raul Edrial and Hecunias Magdasal testified to corroborate this testimony of the appellant.

Gloria Aliabo testified that the appellant arrived at about 5:00 o'clock in the afternoon of November 18, 1987 at her house in Barangay Bonawon which is about 15 kilometers away from Barangay Alangilan; that there are no jeepneys and tricycles in their barangay except buses of the Ceres liner; that the last trip of the Ceres Bus bound for Barangay Alangilan is at 4:30 o'clock in the afternoon, and that bus comes from Dumaguete City. Owing to the road conditions, travel time by foot from Barangay Bonawon to Barangay Alangilan is about four (4) hours, or just an hour if negotiated with a vehicle. She admitted that she is related to Felixnito Lasota, the prosecution's eyewitness, and that she is also a cousin of the appellant

whose mother's surname is also "Lasota"; that she is also a cousin of the wife of the deceased whose death she came to know only when she visited her farm in Barangay Alangilan on November 19, 1987. She was informed that elements of the NPA were responsible for the victim's death.^[10]

Raul Edrial, who is a barriomate of the appellant in Barangay Alangilan, testified that he helped the appellant in loading bananas on a Ceres Bus at about 4:30 o'clock in the afternoon of November 18, 1987. The following day, at about 8:00 o'clock in the morning, he again saw the appellant alight from a Ceres Bus coming from the direction of Barangay Bonawon, Siaton, Negros Oriental. However, he said that in 1987 up to the time he testified for the defense the jeepneys plying the route of Alangilan to Bonawon would last until 7:00 o'clock in the evening. He estimated that travel time of a Ceres Bus coming from Alangilan to Bonawon would only last around 30 minutes. ^[11]

Hecunias Magdasal, a CHDF member of Alangilan, Sta. Catalina, Negros Oriental, testified that while he was waiting for a bus, he saw the appellant, at about 3:00 o'clock in the afternoon of November 18, 1987, in front of his (appellant's) house loading several sacks of bananas on a bus along the road. He was informed by the appellant that the bananas would be brought to Barangay Bonawon, Siaton, Negros Oriental. When he was about 20 meters away from the appellant, he also saw that the bananas were later on loaded on a Ceres Bus bound for Barangay Bonawon, Siaton, Negros Oriental. After receiving reports of the death of Napoleon Aujero, he and Barangay Captain Lacpao went to the house of the deceased to see the dead body of Napoleon Aujero at about 7:00 o'clock in the morning of November 19, 1987. In the afternoon of the same day he saw the appellant at the house of Barangay Captain Jose Lacpao at about 4:00 o'clock in the afternoon.^[12]

The appellant testified that Felixnito Lasota was ill-motivated in testifying against him because of their quarrel which occurred sometime in December 1991 over Felixnito Lasota's pig and that he (appellant) was a witness in the murder and arson cases filed against Barangay Captain Jose Lacpao, uncle of Felixnito's wife.^[13]

The appellant admitted that on November 18, 1987 he was still a member of the CHDF with Barangay Captain Jose Lacpao as his team leader. Whenever the CHDF members were on duty they were provided with firearms, and if they were not on duty they would leave their firearms in the house of Barangay Captain Jose Lacpao. He was issued a garand rifle on the first time he was called by Barangay Captain Lacpao to be on duty. When he was again called to be on duty, he was issued a carbine rifle. However, he said that after every tour of duty, CHDF members like him were asked to deposit these service firearms with the Barangay Captain. He claimed that on November 18, 1987 he was off-duty.^[14]

As to appellant's alleged ordeal in the hands of the military, he testified that he was brought to the army headquarters by Corporals Mardonio and Cañete at about 8:00 o'clock in the morning of August 27, 1991. While thereat, he was told by Capt. Batiancila to acknowledge having caused the death of Napoleon Aujero and to sign some papers in respect thereto. When he refused and denied participation in the killing of Napoleon Aujero, he was manhandled and not allowed to leave until 6:00 o'clock in the afternoon and under strict instruction to return the following day. Together with his father, he returned on the following day, and again he was mauled

while his father was struck with a paddle. In the evening of the said date, he was turned over to the PC Detachment in Nagbagang, Sta. Catalina, Negros Oriental and he was put in jail.^[15]

On re-direct examination^[16] and re-cross examination,^[17] the appellant testified that while he was in the headquarters of Capt. Batiancila the latter punched him on the right jaw and struck him at the back of his head and on both feet with a .45 caliber firearm; and that Corporal Mardonio also struck him at his back with an M16 rifle while Corporal Cañete pressed his left fingers with another M16 rifle against a stone. He submitted himself for physical examination on August 29, 1991 and he was issued a medical certificate by Dr. Patrocinio G. Garupa, Jr. of the Bayawan District Hospital. He did not file a complaint against the soldiers who manhandled him, and he did not inform Barangay Captain Lacpao about it because he believed that the mauling was planned by Barangay Captain Lacpao.

Dr. Patrocinio G. Garupa, Jr., government physician at the Bayawan District Hospital, testified that on August 29, 1991 at about 10:05 o'clock in the morning he treated the appellant for several lacerated wounds, contusions and abrasions. He explained that the wounds must have resulted from a forceful contact with a hard instrument that has been applied on the body of the appellant. On October 10, 1991 he issued a medical certificate^[18] for said medical attendance.^[19]

After the defense rested its case, the prosecution again presented its sole eyewitness, Felixnito Lasota, this time as a rebuttal witness. Felixnito Lasota testified on the rebuttal that on November 18, 1987 he saw the appellant at the house of the latter's sister, Narcinita, that is, first, at about 3:00 o'clock in the afternoon, second, at about 5:00 o'clock in the afternoon, and third, at about 7:00 o'clock in the evening, all of November 18, 1987. When he fetched water from the pump of the house of Narcinita, he again saw the appellant inside the house of Narcinita in the morning of November 19, 1987 doing nothing.^[20]

On June 25, 1996, the trial court rendered its assailed decision, the dispositive portion of which reads, to wit:

"WHEREFORE, judgment is hereby rendered finding accused Marlon Zuniega, alias "Nonoy" guilty beyond reasonable doubt of the crime of Murder and imposes upon said accused the penalty of *Reclusion Perpetua*, with all the accessory penalties provided by law. Said accused is directed to pay the heirs of the deceased Napoleon Aujero the amount of Fifty Thousand (P 50,000.00) Pesos as civil indemnity for such death.

The property bond posted by said accused on June 8, 1992 is hereby ordered cancelled and the accused is ordered immediately committed to the custody of the Provincial Warden.

The accused having been in detention since September 10, 1991 and released on bail only on June 11, 1992, proper account of said period of preventive imprisonment shall be made by the Warden concerned, provided the convict abided by the rules of the institution.

The effects and instruments of the crime are ordered forfeited in favor of