

## FIRST DIVISION

[ G.R. No. 130597, February 21, 2001 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ELMER BOLIVAR Y MOYCO, JAIME MALINAO Y GABUNA, ROLANDO MALINAO Y LLENAS, ACCUSED-APPELLANTS.**

### D E C I S I O N

**DAVIDE JR., C.J.:**

Appellants Elmer Bolivar y Moyco (hereafter ELMER), Rolando Malinao y Llenas (hereafter ROLANDO, SR.), and Jaime Malinao y Gabuna (hereafter JAIME) appeal their conviction for murder by the Regional Trial Court of Odiongan, Romblon, Branch 82, in a decision<sup>[1]</sup> dated 9 May 1997, the dispositive portion of which states:

WHEREFORE, this Court finds the accused (1) ELMER BOLIVAR Y MOYCO alias "TOTO", (2) ROLANDO MALINAO Y LLENAS alias "LANDO" and (3) JAIME MALINAO Y GABUNA guilty beyond reasonable doubt of the crime of MURDER and each is sentenced to suffer the penalty of *reclusion perpetua*, with all its accessory penalties, except co-accused JAIME MALINAO Y GABUNA who is sentenced to an indeterminate penalty of *prision mayor*, as minimum, to fifteen (15) years of reclusion temporal, as maximum, with all its accessory penalties, to pay solidarily (a) the heirs of the deceased Rudy de Juan the civil indemnity of P50,000.00, (b) the widow, Marilou de Juan, the total sum of P3,500.00 as actual damages, without subsidiary imprisonment in case of insolvency, and (c) the costs.

Co-accused JAIME MALINAO Y GABUNA may apply for bail pursuant to Section 5, Rule 114 of the Revised Rules of Criminal Procedure, as amended.

All the accused are entitled to credit the period of preventive imprisonment they have undergone pursuant to Article 29 of the Revised Penal Code.

The Information<sup>[2]</sup> against accused-appellants in Criminal Case No. OD-862 was filed on 19 September 1995. It alleges:

That on or about the 13th day of March, 1995, at around 1:00 o'clock in the morning, in sitio Kawit, barangay Camandag, municipality of Looc, province of Romblon, Philippines, and within the jurisdiction of this Honorable Court, the said accused, conspiring, confederating and mutually helping each other, with intent to kill, did then and there by means of treachery, abuse of superior strength and with evident premeditation, wilfully, unlawfully and feloniously attack, assault and

hack with a bolo and shot with an armalite rifle, one RUDY DE JUAN, inflicting upon the latter multiple mortal wounds in different parts of his body which caused his direct and immediate death.

Accused-appellants were arrested by virtue of warrants for their arrest issued by the trial court.

On 13 October 1995 accused-appellants filed a motion for bail,<sup>[3]</sup> which was opposed by the prosecution.<sup>[4]</sup>

On 6 November 1995 accused-appellants filed a motion to quash and to lift warrant of arrest,<sup>[5]</sup> which the prosecution opposed<sup>[6]</sup> and the trial court denied.<sup>[7]</sup>

At the arraignment and pre-trial on 5 December 1996, accused-appellant each entered a plea of not guilty and the pre-trial was declared terminated because of the refusal of the parties to enter into the same.<sup>[8]</sup> Trial on the merits was thereafter had on various dates.

The witnesses presented by the prosecution were Marilou de Juan, widow of the victim Rudy de Juan; Herminia Nazareno; SPO4 Rogelio Rutor; Dr. Leticia Formilleza; and Johnny Mariano.

Herminia testified that the victim, Rudy de Juan (hereafter Rudy), was killed on 13 March 1995 at around 1:00 a.m. after he attended a dance party at the dance hall of Sitio Kawit, Barangay Camandag, Looc, Romblon. Earlier at the dance hall, a certain Boyet de Juan, Rudy's first cousin, quarreled with Rolando, Jr. Herminia Nazareno, an aunt of Rolando, Jr., told the latter to go home. Herminia accompanied Rolando, Jr. only part of the way, because he returned to the dance hall.<sup>[9]</sup> Rudy and his wife Marilou were still at the dance hall. At about 12:00 o'clock midnight, they went home after Rudy paid for the *lechon manok* and beer. The group was walking on a pathway alongside ROLANDO SR.'s house. Rudy walked ahead of the group, followed one foot behind by Herminia with her 5-year old granddaughter Marilyn and, lastly, by Marilou. When Rudy's group was near the house, ROLANDO, SR. directed on them the light of a 1½ foot long flashlight from inside his fence. With ROLANDO, SR. were his two sons, JAIME and Rolando, Jr. and his son-in-law, ELMER. These three companions poked weapons at Rudy. JAIME used a gun and a "*talibong*" (bolo); Rolando, Jr. had a short gun, and ELMER, an armalite.

Rolando, Jr. went outside the fence with his gun and confronted Rudy. He told Rudy "You were the one advancing." Rudy answered: "You pinpoint the one who has offended you, we have not quarreled Onyoc." Onyoc is the nickname of Rolando, Jr. Upon learning this Rolando, Jr. lowered his gun, but ELMER and JAIME started to fire their guns at Rudy. Both Rudy and Rolando Jr. were hit and fell to the ground. JAIME drew his "*talibong*" and stabbed Rudy.

Rolando, Jr. and Rudy died as a consequence.

Herminia was about one and a half feet from Rudy when the shooting started. She saw very clearly what happened as there was a full moon and the place was well lit. Herminia and Marilyn ran to the former's house. Marilou stayed with Rudy but later also went to Herminia's house. They narrated the incident to Pedro de Juan, Rudy's

father, and later reported the shooting to the barangay captain and to the San Jose Police Station, San Jose, Romblon.<sup>[10]</sup>

Four policemen led by Sgt. Rogelio Rutor accompanied Herminia, Pedro de Juan and Marilou back to the scene of the incident. The body of Rudy lay on the spot where it had fallen. The policemen watched the area, and when morning came, took pictures of the body. Later, the body was brought to the house of Dr. Formilleza, where it was examined.<sup>[11]</sup>

Johnny Mariano, Rudy's brother-in-law, was also at the dance hall that evening. He witnessed the altercation between Rolando, Jr. and Boyet de Juan. Both of the men drew "*balisongs*" during the incident. Herminia then placed her arms over Rolando, Jr., brought him outside and told him to go home.

After the dance, while on his way home, Johnny Mariano saw Rudy on the pathway near the house of ROLANDO, SR. It was there that ROLANDO, SR. directed his flashlight on Rudy from inside the fence of his house. With ROLANDO, SR. were ELMER, JAIME and Rolando, Jr. When Rudy was near the fence, Rolando, Jr. went out and blocked his way. Johnny was fifteen arms' length away and was able to see clearly because of the flashlight being swung upon Rudy by ROLANDO, SR. and also because there was a bright moon and stars. After Rolando, Jr. blocked Rudy's way, ELMER and JAIME shot the latter with an armalite and a shotgun, respectively. Johnny had often seen ELMER carrying the same armalite while guarding the fishpond belonging to a certain Dodong Javier and he had also often seen JAIME carrying the said shotgun while shooting "*daket*" (wild duck) in the fishpond.

Johnny Mariano stated further that Herminia was only two arms' length away from Rudy when the shooting started.

Johnny Mariano hid in a rice paddy and saw Herminia and Marilou run away. He also saw JAIME hacking Rudy with a "*talibong*," after which JAIME and ELMER brought the body of Rolando, Jr. inside the house of ROLANDO, SR. He then ran away to the house of his father-in-law, Pedro de Juan, to tell him of the shooting. Johnny went home and told his wife of the incident. When day broke, he went back to the scene of the killing. There were now a number of police officers around taking pictures of Rudy's body and the surrounding area.<sup>[12]</sup>

Chief of Police Rogelio Rutor testified that in the early morning of 13 March 1995, he received a report of a killing at Sitio Kawit, Barangay Camandag, Looc. He immediately left with three companions to investigate. They went to ROLANDO, SR.'s house and saw Rudy's body lying on the ground with gunshot wounds and hack wounds. Sgt. Rutor found seven empty shells and a live shell of an armalite near the gate of ROLANDO, SR.'s house. He also found an empty shell of a 12-gauge shotgun and a blood-stained bolo near the door of ROLANDO, SR.'s house. Sgt. Rutor took pictures of the weapons and the shells, then had Rudy's body taken away.<sup>[13]</sup>

Dr. Leticia Formilleza, Municipal Health Officer of Looc, Romblon, conducted the autopsy on Rudy's body and found the victim to have suffered gaping hack wounds and a number of gunshot wounds.<sup>[14]</sup>

The defense had a different version of the events.

Illuminada Gabuna Malinao testified that she was roused from sleep on 12 March 1995 by a large explosion near the family home in Sitio Kawit, Saraugay, Mamandag, Looc, Romblon. She woke up her son Rolando, Jr. to see what was happening. Rolando, Jr. opened the door and he was fired upon. Unhurt, he went to get a "*talibong*." Illuminada recognized the shooter as Rudy de Juan, who was accompanied by Diosdado de Juan, Edgar de Juan, Marilou de Juan, Jeffrey de Juan and Herminia Gabuna Nazareno, Illuminada's sister.

After Rolando, Jr. went to get a "*talibong*," he and Rudy grappled with each other. During the scuffle, Edgar de Juan and Diosdado de Juan fired at Rolando, Jr. -- hitting him and Rudy. Edgar was armed with shotgun, while Diosdado had an armalite.<sup>[15]</sup>

Rudy fell and Jeffrey ran towards Rolando, Jr. and stabbed him. Rolando, Jr. cried out for help.<sup>[16]</sup>

Illuminada knew Rudy de Juan, as he was the son-in-law of her sister Herminia. Earlier that evening her son Rolando, Jr. had gone to a dance but had come home at 10:00 o'clock because Rudy and his cousin Boyet de Juan threatened to stab him. It was not the first time that Rudy had tried to harm her family. In 1995, Rudy had hit her other son JAIME with a bolo and, on another occasion, Rudy had advanced upon her family with hostility near the fishpond.<sup>[17]</sup>

At the time of the incident, ROLANDO, SR., JAIME and ELMER were at the fishpond of Herminigildo Javier, where they were hired as guards. ROLANDO, SR. heard the sound of shots from shotguns and rushed back to his house, where he saw Rudy de Juan already dead and Jeffrey, Diosdado, Edgar, Herminia and Marilou running away. Rolando, Jr. was lying by the door and, when asked by his father who attacked him, answered that Jeffrey de Juan stabbed him and Edgar de Juan shot him.

ROLANDO, SR. and a neighbor, Joseph Potolin, carried Rolando, Jr. on a *banca* to take him to a hospital, but he died thereafter.<sup>[18]</sup>

The trial court rejected accused-appellants' version of the incident and convicted them of murder. However, it credited JAIME with the privileged mitigating circumstance of minority under the second paragraph of Article 68 of the Revised Penal Code, *i.e.*, he was below eighteen (18) years of age when the crime was committed.

Accused appellants seasonably appealed to this Court from the judgment. In their Appellants' Brief, accused-appellants allege that the trial court erred:

- A. . . IN HOLDING THAT THE GUILT OF THE ACCUSED HAD BEEN PROVEN BEYOND REASONABLE DOUBT;
- B. . . IN FINDING THAT APPELLANTS WERE GUILTY OF CONSPIRACY TO MURDER RUDY; AND
- C. . . IN APRECIATING TREACHERY AS A QUALIFYING CIRCUMSTANCE

The appeal is without merit.

Accused-appellants maintain that the testimonies of the prosecution witnesses should not have been given credence by the trial court.

We do not agree. Prosecution witnesses Herminia Gabuna, Marilou de Juan, and Johnny Mariano were able to positively identify accused-appellants as the persons who killed Rudy. Herminia and Marilou were with Rudy on their way home from the dance hall when the shooting and stabbing incidents happened. Herminia Gabuna testified thus:

Q After paying and taken [*sic*] what he had bought for, where did Rudy de Juan and his wife go?

A We went home.

Q Who was ahead in going home?

A Rudy de Juan.

Q Who was following Rudy de Juan?

A Myself and my grand-daughter.

Q What about Marilou de Juan?

A She was following my grand-daughter.

COURT:

So, Marilou de Juan was following your grand-daughter in going home?

A Yes, sir.

FISCAL VICTORIANO:

Q Were you able to go directly home that evening?

A No, sir.

Q Do you know the house of Rolando Malinao, Jr.?

A Yes, sir.

Q How far is the house of Rolando Malinao, Jr. to the nearest spot on your way home?

A About four meters.

Q When you were nearing the house of Rolando Malinao, Sr., what happened?

A He flashlighted us.

Q Where does Rolando Malinao, Jr. live at that time?

A In their house?

Q Whose house?

A In the house of Rolando Malinao, Sr.

Q When Rolando Malinao Sr. flashlighted his flashlight with you that evening who were with him?

A Elmer Bolivar, Jaime Malinao and Rolando Malinao, Jr.