

THIRD DIVISION

[G.R. No. 137891, July 11, 2001]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JESUS PATRIARCA, ACCUSED-APPELLANT.

DECISION

VITUG, J.:

The case under review is an appeal from the 18th February 1999 decision^[1] of the Regional Trial Court, Branch 16,^[2] of Kabacan, Cotabato, in Criminal Case No. 965, convicting Jesus Patriarca of the crime of murder and sentencing him to suffer the penalty of *reclusion perpetua* and to indemnify the heirs of Melchor Gulmayo P50,000.00 civil indemnity, P50,000.00 moral damages, and P1,500.00 and P800.00 representing, respectively, reimbursement of the cost for embalming and the coffin used.

The Information filed before the trial court which indicted Patriarca for murder read:

"That on the 24th day of December 1993 at about 7:00 o'clock in the evening, more or less at Barangay Pag-asa, Municipality of Mlang, Province of Cotabato, Philippines, the above-named accused, armed with a 22 magnum revolver, with intent to kill, did then and there wilfully, unlawfully, feloniously and with evident premeditation and treachery, attack, assault and shot therewith the person of MELCHOR GULMAYO, thereby hitting him in the different parts of his body, which caused his instantaneous death thereafter."^[3]

The accused pled "not guilty" to the charge.

The evidence for the prosecution consisted basically of the testimony of witnesses Romy Gulmayo, Ervin Gulmayo, Alicia Gulmayo, Dr. Candida Paracha, Rodrigo Elvas and Francisco Pastolero.

Romy Gulmayo, a nine-year old son of Melchor, testified that on 24 December 1993 he was at home at Pag-asa, Mlang, Cotabato, together with his brother Ervin, his mother Alicia, and his father Melchor. At around seven-thirty in the evening, he and Ervin were resting at the "*lawting*," an elevated portion of the house, when, suddenly, they heard a gunshot. He looked through an opening and, at a distance of about 5 meters, saw the accused, armed with a short firearm, running away from their house. The accused was wearing a pair of short pants and had an orange shirt wrapped around his hand. His mother, brother Ervin and he ran towards the kitchen, located in the annex of their house, where they saw Melchor screaming in pain ("*Agoy*") from a gunshot wound. Moments later, Melchor died. Romy identified in court the accused who had been a long time neighbor.

Ervin Gulmayo, the twelve-year old son of the victim, corroborated the testimony of Romy. The two were resting in the "*lawting*" when they heard the gunshot. He then saw the accused running away from their house with a shirt wrapped around his right hand. He was able to identify the accused because of the light coming from the kitchen. The accused, he said, was a neighbor whose house was only about 250 meters away from the Gulmayos. The following day, Ervin, along with some neighbors, surveyed the scene of the incident. The group was able to retrieve an orange t-shirt a few meters away from their house. It was the same shirt Ervin saw wrapped around the accused's hand on the night of the incident.

Alicia Gulmayo declared that on 24 December 1993, she was at their residence in Pag-asa, Mlang, Cotabato, when her husband was shot and killed. Shortly after hearing the gunshot, she, with her sons Romy and Ervin, rushed to help Melchor. She said her family spent P1,500.00 for embalming and P800.00 for the coffin. She also testified on the moral anguish they had suffered due to the untimely death of her husband.

Dr. Candida Paracha, the resident physician of Mlang District Hospital at Mlang, Cotabato, conducted an autopsy on the body of Melchor. She found Melchor to have sustained a gunshot wound with entry at the back of the ribs which caused his death.

Rodrigo Elvas, a resident of Pag-asa, Mlang, Cotabato, was at home on 24 December 1993 when he heard a gunshot coming from the direction of the house of Melchor Gulmayo and his family. He later learned that Melchor was shot to death. The next day, he went to the Gulmayo residence to survey the place, where he saw footprints which led him to an orange t-shirt near the creek. The shirt appeared to be the same shirt the accused was seen to have been wearing around five-thirty in the afternoon on the day of the incident when he and his friends were drinking *tuba* and beer at Erning Idobingco's nearby store.

Francisco Pastolero, also a resident of Pag-asa, Mlang, Cotabato, corroborated the testimony of Rodrigo that the accused was wearing an orange t-shirt the day Melchor was shot and killed, the same shirt which was later found at the creek near Melchor's house the following day.

The defense, on its part, presented the testimony of accused Jesus Patriarca and its witnesses Rex Fare, Rodolfo Perseverancia, PS1 Noemi Austero and SPO4 Joel Burgos.

The accused claimed that at around seven o'clock in the evening of 24 December 1993, he was in his house at Pulang-lupa, Mlang, Cotabato, with his nephew, Rex Fare, and Rodolfo Perseverancia. Earlier, he and Rex were at Inggo Tababa's residence in Pulang-lupa from three o'clock until five o'clock in the afternoon fetching water in preparation for the wedding of one of Inggo's daughters. At about five o'clock, he and Rex went home to meet with Rodolfo Perseverancia who spent the night in his house. He denied having shot and killed Melchor. He also denied having owned the orange colored t-shirt found near Melchor's house after the incident. He admitted having had a drinking spree at Erning Idobingco's store but that it was, he said, on 20 December 1993 and not on 24 December 1993.

Rex Fare, a nephew of the accused, averred that he and the accused were together