

## THIRD DIVISION

**[ G.R. No. 138472-73, August 09, 2001 ]**

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE VS. PO3  
NOEL PADILLA, ACCUSED-APPELLANT.**

### DECISION

**VITUG, J.:**

PO3 Noel Padilla has appealed from the decision<sup>[1]</sup> of the Regional Trial Court of Bataan, Branch 2, in Criminal Cases No. 5095 and No. 5096, convicting him of murder and frustrated murder.

The twin indictments against appellant for murder and frustrated murder, respectively, read:

"That on or about November 19, 1991, in Morong, Bataan, Philippines, and within the jurisdiction of this Honorable Court, the said accused, with intent to kill, and with treachery and evident premeditation, did then and there willfully, unlawfully and feloniously attack, assault and use personal violence upon Apolinario Belmonte by then and there shooting him with a firearm on the different parts of his body, thereby inflicting upon him mortal wounds which were the direct and immediate cause of his death, to the damage and prejudice of the heirs of the said Apolinario Belmonte."<sup>[2]</sup>

"That on or about November 19, 1991, in Morong, Bataan, Philippines, and within the jurisdiction of this Honorable Court, the said accused with intent to kill, with treachery and evident premeditation, did then and there willfully, unlawfully and feloniously attack, assault and use personal violence upon Jesus Casaul, Jr., by shooting him with a firearm on the right cheek, thereby inflicting upon the said Jesus Casaul, Jr., physical injury which could have caused his death, thus the said accused performing all the acts of execution which would produce the crime of Murder as a consequence, but which nevertheless did not produce it by reason or cause independent of his will, that is, the timely and able medical attendance rendered upon Jesus Casaul, Jr., which prevented his death, to the damage and prejudice nevertheless of the said offended party."<sup>[3]</sup>

Noel Padilla, a member of the Philippine National Police since 1985, pleaded not guilty to both charges. The cases were jointly tried and heard, initially, by Judge Vivencio S. Bacilig and, later, by Judge Lorenzo R. Silva, Jr.

The facts found by the trial court that led to the conviction of the accused were largely sourced from the eyewitness account of Jesus Casaul, Jr., the victim in the frustrated murder charge.

On 18 November 1991, around 11:30 p.m., Jesus Casaul, Jr., and his cousin Apolinario Belmonte, the victim in the murder charge, were partaking of beer and watching a video cassette recording on television inside the Mango Grove restaurant at the Philippine Refugee Processing Center (PRPC) in Morong, Bataan, when PO3 Noel Padilla together with several companions, among them Nonong Navarette, arrived at the scene. Navarette approached Casaul and Belmonte. An ensuing conversation turned into a heated argument. Navarette went back to his group while Padilla, at first appearing to aim his gun at the television set, suddenly went behind Belmonte and shot him twice at the back of his head. Padilla next pointed his gun at Casaul who raised his hands pleading for dear life. The accused, unmindful of the plea, shot Casaul twice, hitting him on the cheek and at the back of his ear.

Belmonte and Casaul were rushed by the owner of the restaurant to the PRPC Hospital. Belmonte did not make it. Dr. Roberto Luneta who conducted the post mortem examination attributed the death of Belmonte to the gunshot wound that had penetrated his skull. Casaul survived. Dr. Benjamin Dacula, the medical officer who attended to Casaul at the PRPC Hospital said that the gunshot wounds sustained by Casaul did not pose any threat to his life. While he had to undergo an operation for the removal of the slugs embedded on his cheek and the right side of his vertebrae, Dr. Antonio Rafael, the surgeon, stated there was, however, no vital tissue damaged and the wounds suffered by the victim, without complications, would not have been enough to kill him.

The defense placed the accused and nine others to the witness stand but, except for the accused, no one attested to the events that had transpired on the night of the shooting. Padilla's own account was synthesized by the trial court; *viz*:

"On November 18, 1991, he was with Lt. Nieves conducting a mobile patrol. On their way to the municipal station, they received a radio call from the station. When they reached the station they were informed that there was a stabbing incident at the PRPC. He was ordered by Lt. Nieves to look into the incident. He had then the handgun which he kept in his possession even if he was not on duty. He changed to civilian clothes and together with members of the family of the victims of the stabbing incident proceeded to the PRPC hospital. At the hospital, Noel saw SPO4 Lagundino, the investigator, who told him that he saw PO3 Tongia at the Shakey's party at the mess hall of the PRPC. When he went to the party, he saw PO3 Tongia who was with some youngster whom he has not met before. Tongia, offered him a mug of beer. He left Shakey's at 10:00 o'clock in the evening, more or less. FO3 Tongia invited him together with the young boys to the picnic grove.

"Upon arriving at the picnic grove, they went directly to the long table. Tongia ordered softdrinks for the young boys and for Tongia and him two (2) bottles of beer. There were two tables near the store occupied by different groups.

"A betamax was playing very loud. But he was not interested in the show.

"When they ran out of cigarettes, he went to the store to buy. He was joking with the saleslady. Afterwards he introduced himself to a person who must have noticed his gun. This man introduced himself as Pines Simon. After he returned to the long table, a group of four (4) males arrived, a group which he saw at Shakey's. One of them occupied the seat near Tongia and two (2) occupied the seats near him. He was introduced to the three who were homosexuals. After exchanging jokes, he left the picnic grove for the hospital after telling Tongia about it. Nothing unusual happened before he left for the hospital.

"x x x      x x x      x x x

"When he was at the hospital at the lobby when he saw Casaul and his cousin at around 1:00 or 2:00 o'clock being transferred in an ambulance he heard their names from SPO2 Lagundino. He has not met the victims before.

"On cross-examination, Noel Padilla declared that he was assigned at the Regional Special Action Force in Camp Olivas in December 1985 up to March 1987. He was the platoon sergeant of the company. They were assigned at civil disturbance control and went to infiltrated areas. This is an elite force of the police.

"x x x      x x x      x x x

"He confirmed that he arrived at around 9:00 o'clock in the evening at the PRPC and after ten (10) or fifteen (15) minutes, he proceeded to Shakey's. x x x

"x x x      x x x      x x x

"It was only after he had a few drinks of beer with Navarette and his companions and with Tongia that he decided to proceed to the picnic grove and Shakey's was about to close. Only he, Tongia and three youngsters who were not homosexuals proceeded to the picnic grove. A few minutes later Nonong Navarette and his three companions arrived. The three (3) went to their table while Nonong Navarette went to the store. This was the second time he met Navarette; the first time was at the police station.

"He was not irritated by the loud volume of the betamax; he did not draw his firearm and aimed it at the betamax. He did not notice if Navarette went to the table occupied by Apolinario Belmonte and Jesus Casaul. He denied that Navarette complained to him about Apolinario Belmonte. From 10:00 p.m. to 12:00 midnight he was at the picnic grove drinking beer and conversing with Tongia. He does not know of any reason why Jesus Casaul should point to him as the one who fired and killed Apolinario Belmonte. He does not know of any reason why Jesus Casaul pointed to him as having fired a gun at him except that he was the

policeman present. He decided to transfer his gun to the front of his pants because according to Navarette someone quarreled with them the night before.

"On re-direct, Noel Padilla declared that he never met Jesus Casaul, Jr., and Apolinario Belmonte before the incident."<sup>[4]</sup>

The trial court gave scant value to the testimony of the accused which it described to be "uncorroborated, negative and evasive in character."<sup>[5]</sup> The court held the shooting of Belmonte and Casaul to have been attended by treachery. The trial court concluded thusly:

"WHEREFORE, the guilt of the accused for the murder of Apolinario Belmonte and the frustrated murder of Jesus Casaul, Jr., having been proved beyond reasonable doubt the accused Noel Padilla is hereby sentenced as follows:

"In Crim. Case No. 5095 for the offense of frustrated murder against Jesus Casaul, Jr., the accused Noel Padilla is sentenced to suffer the indeterminate penalty of six (6) years, one (1) month and eleven (11) days prison mayor as minimum to twelve (12) years, five (5) months and eleven (11) days reclusion temporal as maximum with the accessory penalties provided by law, to indemnify the offended party in the amount of P20,000.00 for moral damages, plus the costs of suit.

"In Crim. Case No. 5096 for the murder of Apolinario Belmonte, the accused Noel Padilla is sentenced to suffer the penalty of reclusion perpetua, with the accessory penalties provided by law, to indemnify the heirs of the deceased Apolinario Belmonte the sum of P50,000.00 and to pay the costs of suit."<sup>[6]</sup>

In this appeal, appellant raises the following issues:

"WHETHER THE TESTIMONY OF JESUS CASAUL, JR., IS TRUSTWORTHY AND RELIABLE, and

"WHETHER THE NON-PRESENTATION OF WITNESSES LISTED IN THE INFORMATIONS (SHOULD) BE CONSTRUED AGAINST THE PROSECUTION."<sup>[7]</sup>

In its attempt to support the first argument, the defense pointed to what it considered to be contradictions in the testimony of Casaul. Thus, Casaul declared on direct examination that he was facing the accused when the latter shot him; however, Dr. Rafael said that based on the location of the wounds, the triggerman must have been at Casaul's right side. Casaul stated that he was still conscious when he was shot on the right cheek, a claim which was not in accord with the opinion of Dr. Rafael that while the wound on Casaul's cheek did not render the