

## SECOND DIVISION

[ G.R. No. 129071, January 31, 2000 ]

**PEOPLE OF THE PHILIPPINES, APPELLEE, VS. ROBERTO MILLIAM ALIAS "*DIOTAY*" AND RICKY MILLIAM ALIAS "*BUROT*," ACCUSED-APPELLANTS.**

### D E C I S I O N

**BELLOSILLO, J.:**

His fatigue uniform, M-16 assault rifle and military insignia were not enough to deter his tragic fate. Felix Demarayo, a member of the 15th Infantry Battalion, Philippine Army, was leisurely pacing along Quezon Street, Iloilo City, on the night of 18 November 1994 when two (2) men blocked his path and gunned him down in cold blood. The fallen soldier succumbed from three (3) bullet wounds as two (2) of the three (3) slugs pierced his chest. After the brutal slaying, the assailants nonchalantly walked away with Demarayo's M-16 like a "trophy" collected by hunters after a successful kill.

On 23 November 1994 Roberto Milliam alias "*Diotay*" and Ricky Milliam alias "*Burot*" were charged with the crime of Robbery with Homicide before the Regional Trial Court of Iloilo.<sup>[1]</sup> The Information alleged that the two (2) accused conspiring with one another shot Felix Demarayo after which they carried away with intent to gain his M-16 rifle valued at ₱10,000.00 belonging to the Government and entrusted to him as member of its armed forces. He died on the spot from the three (3) gunshot wounds sustained from his assailants.<sup>[2]</sup>

Rolando Santos, testifying for the prosecution, narrated that on the night of 18 November 1994, at around 7:30 o'clock, he was driving his tricycle along Quezon Street when he saw a soldier, Felix Demarayo, walking.<sup>[3]</sup> Then two (2) men obstructed his path, one was tall with fair complexion, later identified as Ricky Milliam, while the other was short, stocky and a bit bald, later identified as Roberto Milliam.<sup>[4]</sup> Without any provocation coming from the soldier, Ricky drew his firearm and fired at him, hitting his left hand. A brief struggle among the three (3) men ensued which caused the victim to fall down. As Roberto pulled away he warded off Demarayo by kicking him on the waist. While the victim was sprawled on the ground Roberto aimed his rifle at Demarayo's chest and pulled the trigger. Roberto fired another shot hitting Demarayo on the same spot.<sup>[5]</sup> According to witness Santos, despite being startled by the appalling occurrence, he clearly saw the faces of the assailants as they were only five (5) or six (6) meters away from him and the street was amply lighted by a PLDT lamp-post.<sup>[6]</sup> He continued driving his tricycle and as he passed by, he heard the victim beg for assistance. But overcome by extreme fright he ignored his plea and drove on.<sup>[7]</sup>

Around twenty-five (25) meters away from the victim, the two (2) malefactors

flagged him down. Fearing for his own safety he allowed them to board his tricycle.<sup>[8]</sup> They directed him to drive towards the University of Iloilo where they picked up two (2) companions of theirs along the way. Upon reaching Soccoro Drug Store at JM Basa St. the two (2) men they picked up alighted. Then he was told to proceed to the Iglesia ni Kristo Church where they paid him ₱20.00 and left.<sup>[9]</sup>

On his way home Santos chanced upon his friend Oscar Hiñola, a policeman, and immediately narrated to him what he had just seen. Aware of the potential dangers, Hiñola advised him to stay home and thereafter the former reported the incident at the Iloilo police station. A few hours later, Hiñola fetched Santos and brought the latter to the police station where he was investigated by Lt. Wilfredo Brillantes.<sup>[10]</sup> After answering the questions propounded to him and giving a description of the assailants, Santos assured Lt. Brillantes he would cooperate in the prosecution of the case.

Early the next day Santos was again invited to the police station to identify a suspect. At the detention center Lt. Brillantes asked Santos to peek through a small window where he saw several men inside.<sup>[11]</sup> After taking a good look, he singled out one of them and positively identified him as the short, stocky man with the semi-bald head who shot Demarayo.

At around 10:00 o'clock that same morning, several policemen went to his house again and requested him to return to the station to identify another suspect who was just arrested. As the police car they were riding passed the entrance of the police station, one of the policemen asked him if the other culprit was present among a group of several men standing a few meters away. Immediately he pointed out to one of them as the other malefactor, the one who was tall with fair complexion. Santos even noticed that the offender wore the same clothes he was wearing the previous night.<sup>[12]</sup> Only after pointing them out to the police was he able to know their names, the first suspect he identified as short and stocky with a semi-bald head was Roberto Milliam and the second, tall and fair complexioned, being Ricky Milliam.<sup>[13]</sup>

Another witness for the prosecution, Napoleon Torres, a *trisikad* driver, testified that he also passed through Quezon Street on that fateful night. He said that while he was driving his *trisikad* he saw someone grab an armalite rifle from a person who was lying down on the ground some thirty-five (35) meters away.<sup>[14]</sup> Then he heard a gunshot. It reverberated through the surrounding area causing him to slow down. He saw the short stocky man, Roberto Milliam, shoot the hapless victim who was lying on the road thus forcing him to stop abruptly.<sup>[15]</sup> After they accomplished their objective, the assailants casually walked away from their victim and the crime scene. He continued driving through Quezon Street and as he was about to pass by the two (2) perpetrators one of them looked back at him with a cold stare. As he nervously passed the culprits, he saw their faces as they continued gazing at him in a threatening manner.<sup>[16]</sup>

As there was a police station nearby Torres immediately reported the incident to the police. He led the officers to the crime scene where people were already milling around the lifeless body of Demarayo. The policemen then brought him to the station where he was questioned by Lt. Brillantes.<sup>[17]</sup> Before heading for home he

promised to cooperate with the police in apprehending the killers.

At around 2:00 o'clock the following morning, some policemen fetched him at home and informed him that they needed his help in identifying a suspect.<sup>[18]</sup> At the station Lt. Brillantes asked Torres if he recognized any of the perpetrators from among the ten (10) persons inside the investigation room. Peeking through an open window, he readily identified Roberto Milliam as the gunman he saw shoot Demarayo.<sup>[19]</sup> Lt. Brillantes then instructed him to return later to execute his affidavit.

At 10:00 o'clock that same morning, while Torres was at the police station to execute his affidavit, Lt. Brillantes approached him and informed him that another suspect had just been apprehended. He was directed to look through the window of the investigation room and asked if he had seen anyone of them before. He easily identified Ricky Milliam as the other malefactor since he vividly recalled his features. Ricky was even wearing the same clothes he wore the night before. After identifying this particular assailant, Torres executed his affidavit. Only then did he find out that the person he just identified was Ricky Milliam.<sup>[20]</sup>

Police Officer Brillantes testified that on the night of 18 November 1994 he was at Precinct I at General Luna St., Iloilo City, when he received the report of a shooting at Quezon Street. After questioning witnesses Napoleon Torres and Rolando Santos, a search for the suspects was conducted at Brgy. Roxas resulting in the apprehension of Roberto Milliam.<sup>[21]</sup> At the station, Torres identified Roberto Milliam as one of the gunmen. The next morning, the suspect's nephew, Ricky, visited him at the detention cell. Santos, the other witness, who was present at that time, then pointed to Ricky Milliam as the other perpetrator.<sup>[22]</sup> After both suspects were taken into custody Lt. Brillantes ordered them to undergo a paraffin test.<sup>[23]</sup>

According to Dr. Zenaida Santiago, Regional Chief of the Forensic Section of the PNP Crime laboratory, the separate paraffin tests performed on both suspects yielded traces of gunpowder nitrates on their hands.<sup>[24]</sup>

In his defense, Roberto Milliam denied complicity in the killing and asserted that although he was near the crime scene when the incident transpired, he was merely an innocent bystander and not the culprit. He claimed that when the shooting occurred he was at the store of Josefa San Juan taking some snacks with his nephew, Ricky Milliam.<sup>[25]</sup> Suddenly, Imelda Alar, the niece of the storeowner, rushed to the store and informed them that there were some men fighting outside.<sup>[26]</sup> Upon hearing Imelda, Roberto stepped out of the store to take a look. Outside, he saw two (2) individuals take an armalite from a man lying on the road. He recognized one of them as Excel Maravilla, his long-time neighbor.<sup>[27]</sup> After witnessing everything, he and his companions transferred to another store to continue drinking. At 2:00 o'clock a.m., while attending a vigil in Barangay Roxas, some policemen arrived and invited him to the police station for questioning. According to him, to his surprise he was accused of killing a soldier at Quezon Street. However, upon hearing the charges, he did not mention Excel Maravilla as the culprit since the policemen never asked about him. It was only four (4) hours later when he revealed that Maravilla was the real killer.<sup>[28]</sup>

The testimony of Roberto Milliam was corroborated by his nephew, Ricky Milliam, who confirmed that he was at Josefa's store with Roberto when the shooting occurred. He came to know of the incident only when Imelda Alar announced that there was an altercation going on outside the store,<sup>[29]</sup> and when he looked outside, he saw a man lying on the street. Thereafter, he went with Roberto to another store where they resumed their drinking.

The next day, upon hearing that Roberto was detained at the police station, Ricky decided to visit him.<sup>[30]</sup> Lt. Brillantes saw him there and immediately ordered him to undergo a paraffin test. After he was found to be positive of nitrates, he was then detained and prevented from going home.

Another defense witness, 13-year old Hylene Hurtada, testified that at 6:30 o'clock in the evening of 18 November 1994 she went to Josefa's store to buy bread. There she saw her neighbors, Roberto and Ricky Milliam, having some snacks.<sup>[31]</sup> Thirty (30) minutes later, she proceeded to Quezon Street to wait for her brother who earlier instructed her to meet him there after coming from school at 8:00 o'clock in the evening. As she was waiting, she saw Demarayo brutally gunned down barely ten (10) meters away.<sup>[32]</sup> She was able to describe the two (2) men but she had no idea who they were.<sup>[33]</sup>

Josefa San Juan corroborated the versions of the Milliams. She said that at the time of the shooting Roberto and Ricky Milliam were at her store taking some snacks.<sup>[34]</sup> Suddenly Imelda Alar, her niece, rushed in and informed her that there was a fight outside.<sup>[35]</sup> As she (Josefa) was about to go out to see for herself, she heard a burst of gunfire. Outside she saw a wounded man lying on the street. She then went back inside and noticed that the accused were still standing, curiously observing the shooting incident from her store.<sup>[36]</sup>

The defense was also affirmed by Imelda Alar who testified that when she heard the first gunshot she went out of her house and saw three (3) persons grappling for possession of a gun. She then rushed to her aunt's store to look for her children.<sup>[37]</sup> There she saw Roberto and Ricky Milliam eating.<sup>[38]</sup> Hence they could not have been the killers of Felix Demarayo.

The court *a quo* was unpersuaded. On 10 September 1996 the court convicted both accused Roberto and Ricky Milliam of Robbery with Homicide and sentenced each to *reclusion perpetua* with the accessories provided by law, and ordered to pay the family of the victim P50,000.00 as death indemnity, P20,920.75 for the wake and burial expenses and to pay the government P10,000.00 representing the value of the service firearm they took from Demarayo.<sup>[39]</sup>

Accused-appellants now allege that the trial court erred in holding them guilty of Robbery with Homicide describing as inconsistent and highly improbable the testimonies of the prosecution witnesses.<sup>[40]</sup> They point out that the affidavits executed by Rolando Santos and Lt. Wilfredo Brillantes directly clashed with their testimonies in open court.

According to accused-appellants, Rolando Santos stated in his affidavit that

accused-appellants hailed his tricycle at Quezon Street, and after bringing them to their destination he passed through the same street where he saw a crowd gathered around the victim's body. Upon seeing this, he concluded that his passengers must have been the killers as they were carrying firearms.<sup>[41]</sup> However, in his testimony in court, he clearly stated that he saw the actual shooting and that thereafter the killers boarded his tricycle thus enabling him to identify them. As regards Lt. Brillantes, he stated in his affidavit that he arrested Ricky Milliam at around 1:00 o'clock in the afternoon, but when he testified in court he said that Ricky was arrested earlier at around 9:00 o'clock in the morning when the latter visited his uncle Roberto at the police precinct.

Accused-appellants therefore argue that these inconsistencies between the affidavits of the prosecution witnesses and their testimonies in court are enough to discredit them and to cast a reasonable doubt on their guilt.

We do not agree. We have repeatedly held that when there is an inconsistency between the affidavit and the testimony of a witness in court, the testimony commands greater weight.<sup>[42]</sup> For, oftentimes, affidavits taken *ex parte* are considered inaccurate as they are prepared by other persons who use their own language in writing the affiant's statements. Omissions and misunderstandings by the writer are not infrequent, particularly under circumstances of haste or impatience.<sup>[43]</sup> Thus, more often than not, affidavits do not reflect precisely what the declarant wants to impart. Worse, after the affidavit is mechanically read to the affiant, such document is merely signed even though the affiant does not fully agree with what has been written. Rolando Santos testified -

Q: Do you know who prepared this affidavit of yours?

A: A policeman, Sir.

Q: Do you know his name?

A: A certain Nathaniel, Sir.

COURT: Were there matters you know in the incident that were not included in the affidavit?

A: Yes, your Honor x x x x

ATTY.  
SALMON: And what were those things that you considered not in your affidavit already marked as Exhibit "1"?

A: Matters like my personally having witnessed what had taken place including the shooting and my driving, Sir.

Q: Before this affidavit was taken from you by a certain Nathaniel did he ask you to narrate all matters regarding the incident?

A: I was narrating the incident when he was typing, Sir.

Court: You mean he asks (sic) you questions (and) you