

SECOND DIVISION

[G.R. No. 130667, February 22, 2000]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ILDEFONSO VIRTUCIO JR. ALIAS "GAGA," ACCUSED-APPELLANT.**

D E C I S I O N

BELLOSILLO, J.:

An Information was filed on 8 April 1996 charging Ildefonso Virtucio, Jr. with murder for the death of Alejandro Briones. To this day however the accused professes innocence.

The conviction of the accused was based on the following evidence of the prosecution: At around ten o'clock in the evening of 31 March 1996 Alejandro Briones was standing outside his store in Mambaling, Cebu City. He was watching his neighbors play "*chikicha*," a card game. Suddenly appearing from nowhere accused Ildefonso Virtucio Jr. approached the store muttering, "*Ako nasay andar karon kay duna koy tawo nga nalagutan nga nagpa-raid nako sa shabu.*"^[1] The accused then took out his gun and fired downwards. Then without any provocation the accused aimed his gun at the head of Alejandro Briones; the gun did not fire. Alejandro stood up and parried off the firearm. He asked Virtucio, "*Unsa man, Ga?*" In answer, Virtucio fired his gun and this time Alejandro was hit on his stomach. Virtucio fired another shot hitting Alejandro on his right forearm. Wounded and bleeding from his wounds, Alejandro tried to run but Virtucio finished him off with a fatal shot on the head which sent the victim falling to the ground.

Betty Briones, wife of Alejandro, was in their store. She was just one and a half (1 1/2) meters away from her husband when shot. She saw the startling occurrence as did their 12-year old son "*Aly Boy*" who was playing outside the store.

With the help of their neighbors Alejandro was taken to the Cebu City Medical Center where he died two (2) days later. Proximate cause of his death, according to his examining physician, was "cardiopulmonary arrest secondary to pulmonary embolism with possible myocardial infraction and fulminating sepsis secondary to multiple gunshot wounds."^[2] For his hospitalization and medical attendance, the Brioneses incurred expenses in the amount of P57,000.00.

Accused Virtucio interposed alibi for his defense. He alleged that as early as eleven o'clock in the morning of 31 March 1996 he was already on his way to Tabuelan, Cebu, together with his business partner, Pablo Cuer, to await the arrival of seashells from Escalante, Negros Occidental. They arrived in Tabuelan at around four-thirty in the afternoon. He stayed in the house of Cuer until 2 April 1996 since the seashells did not arrive on the expected date. During his stay in Tabuelan he shared the same room with Cuer leaving the latter's wife to sleep in another room.

On 2 April 1996 police authorities from the Tabuelan Police Station went to the Cuer residence and invited the accused to their headquarters where he was subsequently detained. He came to know that he was implicated in the killing of Alejandro Briones only on 3 April 1996. He could not think of any reason why Betty and "Aly Boy" Briones would implicate him in the crime. In fact, the Brioneses were his neighbors for three (3) years and they had maintained good relationship throughout those years. He admitted though that one (1) month before the killing, the house of his common-law wife's parents was raided for shabu; however, he never blamed anyone for the incident.

Pablo Cuer corroborated the testimony of Virtucio. He said that once in Tabuelan, Cebu, the accused never left their house as they even shared the same room, while his wife slept in another room. On 1 April 1996 they woke up at four-thirty in the morning and proceeded to the wharf to wait for the seashells from Escalante, Negros Occidental. Since the seashells failed to arrive as scheduled Virtucio had to stay with the Cuers for another night. In the afternoon of the following day, 2 April 1996, Policeman Alfredo Arellano invited Virtucio to the police station where he was subsequently detained. According to Cuer, he did not bother to give Virtucio some food while detained because he (Cuer) returned to the wharf to get the seashells.

Fe Tesoro, mother of the common-law wife of the accused, testified that she asked the accused to go in her stead to Tabuelan in the company of Pablo on 31 March 1996. So, Virtucio and Cuer left Cebu City at about ten o'clock in the morning. The Tesoros likewise went to Tabuelan that same evening using their old Tamaraw vehicle. They arrived at the house of the Cuers at around eleven o'clock in the evening. Fe Tesoro allegedly told the accused to go home as soon as the seashells were available, after which the Tesoros returned to Cebu City arriving there at midnight. Fe denied knowing that her neighbor Alejandro Briones was shot at the time she left for Tabuelan, Cebu. She insisted that she only knew about the shooting of Alejandro the following day. As to the fact that Virtucio was a suspect, she testified that she learned about it only on 2 April 1996 when the police authorities fetched him from Tabuelan, Cebu.

On 21 October 1996 the Regional Trial Court of Cebu City found Virtucio guilty of murder and sentenced him to suffer the penalty of *reclusion perpetua* and to indemnify the heirs of Alejandro Briones the amount of P50,000.00. The court *a quo* disregarded the alibi of the accused in view of his positive identification by the prosecution witnesses as the author of the crime. Besides, he miserably failed to prove that it was physically impossible for him to have been at the crime scene at the time it was committed.

The trial court found that evident premeditation and treachery qualified the killing to murder. The court below ratiocinated that evident premeditation was present considering that the accused had harbored a grudge against the victim, the latter being suspected of instigating the raid in the house of his common-law wife's mother. The court *a quo* concluded, in addition, that the killing was treacherous as it was done in a sudden and unexpected manner, leaving the victim in no position to effectively defend himself.

Accused-appellant is now before us impugning the testimonies of the victim's widow and son for allegedly being "biased and polluted." He suggests that their testimonies be considered fabricated as they were too harmonious with nary a hint of