

SECOND DIVISION

[G.R. No. 117954, April 27, 2000]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ORLANDO ACURAM, ACCUSED-APPELLANT.**

D E C I S I O N

QUISUMBING, J.:

On appeal is the decision rendered on August 24, 1994, by the Regional Trial Court of Cagayan de Oro City, Branch 22, in Criminal Case No. 91-1161, finding accused-appellant Orlando Acuram guilty of murder.

On September 30, 1991, Assistant Provincial Prosecutor Benber Apepe charged appellant with the crime of murder, allegedly committed as follows:

"On June 29, 1991, at about 7:00 o'clock in the evening, at Poblacion, El Salvador, Misamis Oriental, which is within the jurisdiction of the Honorable Court, the above-named accused, with intent to kill and treachery did, then and there, wilfully, unlawfully and feloniously and with the use of his armalite rifle, shoot at one Orlando^[1] Manabat who was just standing on the highway waiting for a ride towards home, thus, hitting and wounding the latter on the right leg or thigh, which caused his death the following day.

CONTRARY TO and in violation of Article 248, paragraph 1, of the Revised Penal Code.^[2]

Upon arraignment appellant, assisted by counsel, entered a plea of not guilty to the charge.^[3] Thereafter, trial on the merits ensued. Subsequently, the trial court rendered judgment, disposing as follows:

"WHEREFORE, in the light of the foregoing facts, convincingly proved by the prosecution, the accused, ORLANDO ACURAM, is hereby found guilty beyond reasonable doubt, of the crime of MURDER, qualified by treachery, and is meted the penalty of reclusion perpetua and to indemnify the heirs of the deceased ROLANDO MANABAT the jurisprudential sum of fifty thousand (P50,000.00) pesos, without subsidiary imprisonment in case of insolvency and to pay the cost of the suit.

SO ORDERED."^[4]

The records disclose that on June 29, 1991, at around seven o'clock in the evening, Rolando Manabat, Oscar Manabat, Bartolome Nabe, and Peterson Valendres, after

the day's work, proceeded to the market in El Salvador, Misamis Oriental, to buy fish. Since no fish was available at that time, they decided to head for home instead. They went to the national highway, stood at the right side facing east towards the direction of Cagayan de Oro City and waited for a ride there. They flagged down an approaching passenger jeepney which, however, swerved dangerously towards them. At this juncture, Rolando Manabat shouted at the jeep "*Pesteng yawa-a kamo, Manligis man kamo* " (You devils, why did you try to run over us?). A passenger inside the jeepney shouted back, "*Noano man diay, isog mo?*" (Why? Are you brave?). Immediately thereafter, two gunshots rang out in the air, accompanied by sparks coming from the front right side of the jeepney. Then Rolando shouted, "*Agay. I was shot.*" The vehicle did not stop but instead speeded towards the direction of Cagayan de Oro City. Wounded on the right knee, Rolando was brought by his companions to the Cagayan de Oro Medical Center. Later on, they were informed that Rolando needed blood transfusion and so they transferred him at around 11:25 P.M. to the Northern Mindanao Regional Hospital in the same city.

Upon arrival at the hospital, Rolando was examined by Dr. Ismael Naypa, Jr. The doctor found the victim's blood pressure to be just forty over zero (40/0) and the victim's right leg was heavily bandaged. He decided to operate on the victim when the latter's blood pressure stabilized. At about 5:00 A.M. the following day, the victim underwent surgery. Unfortunately, the victim died at around 11:00 A.M. Dr. Naypa later testified that the cause of Rolando's death was "secondary to huddle respiratory syndrome secondary to blood loss, secondary to gunshot wounds", or briefly, massive loss of blood due to gunshot wound. He stated that under normal circumstances, the wound would not necessarily cause death but in this case where the wound transected the major part of the leg, the wound was fatal. He clarified that the victim sustained only one gunshot wound which entered at the front portion of the right knee and exited at the back of the right knee, causing two wounds.^[5]

The El Salvador police conducted investigation on the incident. It was discovered that appellant Orlando Acuram, a policeman assigned with the 421st PNP Company based at San Martin, Villanueva, Misamis Oriental, was among the passengers of the errant jeepney. He was seated at the front, right side of the jeepney and was the only one among its passengers who was carrying a firearm. Pending investigation, he was restricted to the camp effective July 1, 1991, upon orders of his commanding officer, Major Rodolfo De La Piedra.^[6] Appellant was later surrendered by his commanding officer to the custody of the court on the basis of the warrant of arrest issued by MCTC Judge Evelyn Nery.^[7] On motion by the prosecution and without objection from the defense, the trial court suspended appellant from the service and ordered his detention at the provincial jail.^[8]

During the trial, appellant admitted that he was on board the mentioned jeepney and had a gun at that time but denied firing it. He claimed that it was impossible for him to fire his rifle during that time since he was sitting at the front seat of the jeepney, sandwiched between the driver and the latter's father-in-law. Moreover, he said that the rifle was locked and wrapped by his jacket and its barrel was even pointed towards the driver.^[9]

The trial court found the version of the defense weak, self-serving and unreliable. On the basis of the evidence presented by the prosecution, the court found appellant guilty as charged. Insisting on his innocence, appellant readily filed his

notice of appeal.^[10] In his brief, appellant raises the following errors allegedly committed by the trial court:

"I

THE TRIAL COURT GRAVELY ERRED IN CONCLUDING THAT ACCUSED APPELLANT TOOK FLIGHT OR ESCAPED AFTER THE NIGHT OF THE INCIDENT OR IN FAILING TO CONSIDER THE MITIGATING CIRCUMSTANCE OF VOLUNTARY SURRENDER.

II

THE TRIAL COURT ERRED IN DECLARING THAT THE KILLING WAS ATTENDED BY THE QUALIFYING CIRCUMSTANCE OF TREACHERY, GRANTING ARGUENDO THAT THE ACCUSED APPELLANT IS GUILTY.

III

THE TRIAL COURT ERRED IN RULING THAT ACCUSED-APPELLANT IS THE PERPETRATOR OF THE CRIME CHARGED, DESPITE THE FACT THAT ACCUSED WAS NOT PROPERLY AND CONCLUSIVELY IDENTIFIED, AND THE ALLEGED WEAPON NOT POSITIVELY TESTED.

IV

THAT THE TRIAL COURT GRAVELY ERRED IN DISREGARDING EVIDENCE POINTING TO THE INNOCENCE OF THE ACCUSED-APPELLANT, THAT IS, THE EXISTENCE OF EFFICIENT INTERVENING CAUSE, WHICH IS THE PROXIMATE CAUSE OF THE DEATH OF THE VICTIM."^[11]

We shall take up *in seriatim* the challenges posed by appellant to the credibility and sufficiency of the evidence for the prosecution. We shall also consider the weight and credibility of his defense.

To begin with, while appellant denies that he fled and hid after the shooting incident, we find that his behavior proves otherwise. Appellant admits that he was at the scene of the crime at the time the shooting happened. Considering that he is a law enforcement officer, the unusual incident should have at least elicited his curiosity and he should have inquired about it. However, he chose to ignore the incident and go his way.^[12] That a policeman could display such indifference to a crime committed in his presence is highly incredible. While it was true that he reported for duty the day after the incident, the following day, he was ordered by his commanding officer restricted within the camp pending investigation of the case. By this time, appellant must have learned that his commanding officer had received a radio message and that he was already a suspect. As the trial court noted, no superior officer will hold back from any of his men involved, such a grave charge. Despite these, appellant did not present himself before the police in El Salvador, Misamis Oriental. Instead, he was conveniently nowhere to be found.

Thus, appellant's first contention that he is entitled to the mitigating circumstance of voluntary surrender, in our view, is quite untenable. The essence of voluntary surrender is spontaneity and the intent of the accused to give himself up and submit