

SECOND DIVISION

[G.R. No. 125909, June 23, 2000]

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
HERMOGENES FLORA AND EDWIN FLORA, ACCUSED-
APPELLANTS.**

DECISION

QUISUMBING, J.:

Accused-appellants seek the reversal of the decision^[1] dated November 7, 1995, of the Regional Trial Court, Branch 26, Santa Cruz, Laguna, in Criminal Case Nos. SC-4810, 4811 and 4812, finding them guilty beyond reasonable doubt of the crimes of double murder and attempted murder, and sentencing them to *reclusion perpetua*, payment of P50,000.00 for indemnity, P14,000.00 for burial expenses and P619,800.00 for loss of earning capacity in Crim. Case SC-4810 for the death of Emerita Roma; *reclusion perpetua*, payment of P50,000.00 as indemnity, P14,000.00 for burial expenses and P470,232.00 for loss of earning capacity for the death of Ireneo Gallarte in Crim. Case SC-4811; and imprisonment from 2 years, 4 months and 1 day of *prision correccional* as minimum to 10 years of *prision mayor* and payment of P15,000.00 to Flor Espinas for injuries sustained in Crim. Case SC-4812.

On February 26, 1993, Prosecution Attorney Joselito D.R. Obejas filed three separate informations charging appellants as follows:

Criminal Case No. 4810

"That on or about January 10, 1993, at around 1:30 o'clock in the morning thereof, in Sitio Silab, Barangay Longos, municipality of Kalayaan, province of Laguna, and within the jurisdiction of this Honorable Court, accused Hermogenes Flora @ Bodoy, conspiring and confederating with accused Edwin Flora @ Boboy, and mutually helping one another, while conveniently armed then with a caliber .38 handgun, with intent to kill, by means of treachery and with evident premeditation, did then and there wilfully, unlawfully and feloniously attack, assault and shoot with the said firearm one EMERITA ROMA y DELOS REYES, thereby inflicting upon the latter gunshot wounds on her chest which caused her immediate death, to the damage and prejudice of her surviving heirs.

That in the commission of the crime, the aggravating circumstances of treachery and evident premeditation are present."^[2]

Criminal Case No. 4811

"That on or about January 10, 1993, at around 1:30 o'clock in the

morning thereof, in Sitio Silab, Barangay Longos, municipality of Kalayaan, province of Laguna, and within the jurisdiction of this Honorable Court, accused HERMOGENES FLORA @ Bodoy, conspiring and confederating with accused Erwin [Edwin] Flora @ Boboy, and mutually helping one another, while conveniently armed then with a caliber .38 handgun, with intent to kill, by means of treachery and with evident premeditation, did then and there willfully, unlawfully and feloniously attack, assault and shoot with the said firearm one IRENEO GALLARTE y VALERA, thereby inflicting upon the latter gunshot wounds on his chest which caused his immediate death, to the damage and prejudice of his surviving heirs.

That in the commission of the crime, the aggravating circumstances of treachery and evident premeditation are present."^[3]

Criminal Case No. 4812

"That on or about January 10, 1993, at around 1:30 o'clock in the morning thereof, in Sitio Silab, Barangay Longos, municipality of Kalayaan, province of Laguna, and within the jurisdiction of this Honorable Court, accused Hermogenes Flora @ Bodoy, conspiring and confederating with accused Erwin [Edwin] Flora @ Boboy, and mutually helping one another, while conveniently armed then with a caliber .38 handgun, with intent to kill, by means of treachery and with evident premeditation, did then and there willfully, unlawfully and feloniously attack, assault and shoot with the said firearm one FLOR ESPINAS y ROMA, hitting the latter on her shoulder, and inflicting upon her injuries which, ordinarily, would have caused her death, thus, accused performed all the acts of execution which could have produced the crime of Murder as a consequence but which, nevertheless did not produce it by reason of a cause independent of their will, that is, by the timely and able medical attendance given the said Flor Espinas y Roma, which prevented her death, to her damage and prejudice."^[4]

During arraignment, both appellants pleaded not guilty. Trial thereafter ensued. Resolving jointly Criminal Cases Nos. SC-4810, SC-4811 and SC-4812, the trial court convicted both appellants for the murder of Emerita Roma and Ireneo Gallarte, and the attempted murder of Flor Espinas. The dispositive portion of the decision reads:

"WHEREFORE, in the light of the foregoing, this Court finds as follows:

In CRIMINAL CASE NO. SC-4810, for the death of Emerita Roma, the Court finds both accused Hermogenes Flora and Edwin Flora guilty beyond reasonable doubt of the crime of Murder qualified by treachery and sentences each of them to suffer the penalty of reclusion perpetua, with all the accessory penalties of the law, and to indemnify the heirs of the victim the sums of (a) P50,000.00 as death indemnity; (b) P14,000.00 as expenses for wake and burial; and (c) P619,800 for lost (sic) of earning capacity, without any subsidiary imprisonment in case of insolvency and to pay the costs.

In CRIMINAL CASE NO. SC-4811, for the death of Ireneo Gallarte, the Court finds both accused Hermogenes Flora and Edwin Flora guilty beyond reasonable doubt of the crime of Murder, qualified by treachery and with the aggravating circumstance of evident premeditation and sentences each of them to suffer the penalty of reclusion perpetua, with all the accessory penalties of the law, and to indemnify the heirs of the victim the sums of (a) P50,000.00 as death indemnity; (b) P14,000.00 as expenses for wake and burial; and (c) P470,232.00 for lost (sic) of earning capacity, without any subsidiary imprisonment in case of insolvency and to pay the costs.

In CRIMINAL CASE NO. SC-4812, for the injuries sustained by Flor Espinas, the Court finds both accused Hermogenes Flora and Edwin Flora guilty beyond reasonable doubt of the crime of Attempted Murder and sentences each of them to suffer an indeterminate penalty of imprisonment from two (2) years, four (4) months and one (1) day of prision correccional, as minimum, to ten (10) years of prision mayor, as maximum, and to pay P15,000.00 to Flor Espinas as indemnity for her injuries and to pay the costs.

SO ORDERED."^[5]

The facts of the case, borne out by the records, are as follows:

Days before the incident, appellant Hermogenes Flora *alias* "Bodoy," had a violent altercation with a certain Oscar Villanueva. Oscar's uncle, Ireneo Gallarte, pacified the two.

On the evening of January 9, 1993, a dance party was held to celebrate the birthday of Jeng-jeng Malubago in Sitio Silab, Barangay Longos, Kalayaan, Laguna. Appellant Hermogenes Flora, allegedly a suitor of Jeng-jeng Malubago, attended the party with his brother and co-appellant Edwin Flora, *alias* "Boboy". Also in attendance were Rosalie Roma, then a high school student; her mother, Emerita Roma, and her aunt, Flor Espinas. Ireneo Gallarte, a neighbor of the Romas, was there too.

The dancing went on past midnight but at about 1:30, violence erupted. On signal by Edwin Flora, Hermogenes Flora fired his .38 caliber revolver twice. The first shot grazed the right shoulder of Flor Espinas, then hit Emerita Roma, below her shoulder. The second shot hit Ireneo Gallarte who slumped onto the floor. Rosalie, was shocked and could only utter, "*si Bodoy, si Bodoy*", referring to Hermogenes Flora. Edwin Flora approached her and, poking a knife at her neck, threatened to kill her before he and his brother, Hermogenes, fled the scene.

The victims of the gunfire were transported to the Rural Health Unit in Longos, Kalayaan, Laguna, where Emerita and Ireneo died.^[6]

Early that same morning of January 10, 1993, the police arrested Edwin Flora at his rented house in Barangay Bagumbayan, Paete, Laguna. Hermogenes Flora, after learning of the arrest of his brother, proceeded first to the house of his aunt, Erlinda Pangan, in Pangil, Laguna but later that day, he fled to his hometown in Pipian, San Fernando, Camarines Sur.

The autopsy conducted by the medico-legal officer, Dr. Ricardo R. Yambot, Jr., revealed the following fatal wounds sustained by the deceased:

EMERITA ROMA

"a) Gunshot of entrance at the posterior chest wall near the angle of the axillary region measuring 1 cm. in diameter with clean cut inverted edges involving deep muscles, and subcutaneous tissues and travel through both lobes of the lungs, including the great blood vessels.

About 400 cc of clotted blood was extracted from the cadaver. The bullet caliver 38 was extracted from the lungs.

The cause of her death was attributed to `Hypovolemic' shock secondary to massive blood loss secondary to gunshot wound of the posterior chest wall."^[7]

IRENEO GALLARTE

"Gunshot wound of entrance at the left arm, measuring 1 cm. in diameter with clean cut inverted edges involving the deep muscles, subcutaneous tissues traveling through the anterior chest wall hitting both lobes of the lungs and each great blood vessels obtaining the bullet fragments.

About 500 cc. of clotted blood was obtained from the cadaver."

His cause of death was attributed to `Hypovelemic' shock secondary to massive blood loss secondary to gunshot wound of the left arm."^[8]

Flor Espinas submitted herself to a medical examination by Dr. Dennis Coronado. Her medical certificate ^[9] disclosed that she sustained a gunshot wound, point of entry, 2 x 1 cm. right supra scapular area mid scapular line (+) contusion collar; and another gunshot wound with point of exit 1 x 1 cm. right deltoid area.

Three criminal charges were filed against the Flora brothers, Hermogenes and Edwin, before Branch 26 of the Regional Trial Court of Sta. Cruz, Laguna. During the trial, the prosecution presented two eyewitnesses, namely, (1) Rosalie Roma, daughter of one of the victims, Emerita Roma, and (2) Flor Espinas, the injured victim. Rosalie narrated the treacherous and injurious attack by Hermogenes Flora against the victims. Flor detailed how she was shot by him.

Felipe Roma, the husband of Emerita, testified that his wife was forty-nine (49) years old at the time of her death and was a paper mache maker, earning an average of one thousand (P1,000.00) pesos a week. He claimed that his family incurred fourteen thousand (P14,000.00) pesos as expenses for her wake and burial.

Ireneo Gallarte's widow, Matiniana, testified that her husband was fifty-two (52) years old, a carpenter and a substitute farmer earning one hundred (P100.00) to two hundred (P200.00) pesos a day. Her family spent fourteen thousand (P14,000.00) pesos for his wake and burial.

The defense presented appellants Hermogenes and Edwin Flora, and Imelda Madera, the common-law wife of Edwin. Appellants interposed alibi as their defense, summarized as follows:

Version of Edwin Flora:

"Edwin Flora, 28 years old, testified that accused Hermogenes Flora is his brother. On January 10, 1993, around 1:30 in the morning, he was at Barangay Bagumbayan, Paete, Laguna in the house of Johnny Balticanto, sleeping with his wife. Policemen came at said house looking for his brother Hermogenes. Replying to them that his brother was not living there, policemen took him instead to the Municipal building of Paete and thereafter transferred and detained him to (sic) the Municipal building of Kalayaan.

He recalled that on January 9, 1993, after coming from the cockpit at about 3:00 p.m. he and his accused brother passed by the house of Julito Malubago. His brother Hermogenes was courting the daughter of Julito Malubago. At about 6:00 p.m. he went home but his brother stayed behind since there would be a dance party that night."^[10]

Version of Hermogenes Flora:

"Hermogenes Flora, 21 years old, testified that he did not kill Ireneo Gallarte and Emerita Roma and shot Flor Espina on January 10, 1993 at about 1:30 in the morning of Silab, Longos Kalayaan Laguna.

On said date, he was very much asleep (sic) in the house of his sister Shirley at Sitio Bagumbayan, Longos, Kalayaan. From the time he slept at about 8:00 in the evening to the time he woke up at 6:00 in the morning, he had not gone out of her sister's house. He knew the victims even before the incident and he had no severe relation with them.

x x x

He also testified that in the morning of January 10, 1993, Imelda Madera came to their house and told him that his brother Edwin was picked-up by the policemen the night before. Taken aback, his sister told him to stay in the house while she would go to the municipal hall to see their brother Edwin. Thereafter, his aunt and sister agreed that he should go to Bicol to inform their parents of what happened to Edwin."^[11]

Madera corroborated the testimony of her husband.^[12]

As earlier stated, the trial court convicted accused-appellants of the crime of double murder and attempted murder. Appellants now raise this sole assigned error:

"THE TRIAL COURT ERRED IN CONVICTING THE TWO ACCUSED-APPELLANTS DESPITE THE FAILURE OF THE PROSECUTION TO MORALLY ASCERTAIN THEIR IDENTITIES AND GUILT FOR THE CRIMES CHARGED."