

## FIRST DIVISION

[ G.R. No. 123095, July 06, 2000 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. EFREN  
MINDANAO Y GUMABAO, ACCUSED-APPELLANT.**

### D E C I S I O N

**PARDO, J.:**

This is an appeal interposed by the accused Efren Mindanao y Gumabao from the consolidated decision of the Regional Trial Court, Branch 167, Pasig<sup>[1]</sup> acquitting him of violation of P. D. 1866, and convicting him of murder and sentencing him to *reclusion perpetua* "in its medium period or an imprisonment ranging from twenty six (26) years, eight (8) months and one (1) day, as minimum, to thirty three (33) years and four (4) months, as maximum, to indemnify the offended party in the aggregate amount of P222,748.22; to suffer all the accessory penalties provided for by law; and, to pay the costs."

We state the antecedent facts.

On October 2, 1993, at around twelve o'clock in the morning, Apolonio Hornilla ("Apolonio"), a meat vendor, was weighing meat at his stall in the Urbano Velasco Public Market in Pasig, Metro Manila. In the area was prosecution witness Perfecto de Jesus ("Perfecto") who was waiting for his turn to buy meat.

While Apolonio was weighing beef, Perfecto saw a man approach Apolonio from Apolonio's left side. The man pulled out a gun and fired at Apolonio twice, hitting him on the nape. Apolonio collapsed. The assailant left. Perfecto approached Apolonio and brought him to the Rizal Medical Center. After taking Apolonio to the hospital, Perfecto went to buy medicine. Along the way, Perfecto learned that policemen apprehended Apolonio's assailant. Perfecto proceeded to the police precinct and identified accused from a line-up of around ten (10) detainees.<sup>[2]</sup>

On October 2, 1994, Perfecto executed a sworn statement before the police investigators. In the statement, he identified accused as the person who shot Apolonio.<sup>[3]</sup>

On October 5, 1993, Third Assistant City Prosecutor Quezon B. Alejandro filed with the Regional Trial Court, Pasig, an information for frustrated murder and an information for illegal possession of firearms against accused. The information for frustrated murder reads:<sup>[4]</sup>

"That on or about the 2nd day of October 1993 in the Municipality of Pasig, Metro Manila, Philippines and within jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together with Pedro Conte and Leonides Conte who are still at large and mutually

helping and aiding one another, armed with a gun, with intent to kill and with treachery and evident premeditation, did then and there willfully, unlawfully and feloniously attack, assault and shoot one Apolonio Hornilla y de Castro with the said gun hitting him on his right neck thereby inflicting upon the latter gunshot wounds which would ordinarily [have] caused his death thus performing all acts of execution which would have produced the crime of murder as a consequence but nevertheless it did not produce it by reason of cause or causes independent of his will, that is due to the timely and able medical assistance rendered to said Apolonio Hornilla.

"CONTRARY TO LAW."

On November 4, 1993, accused was arraigned for violation of P. D. 1866 (Illegal Possession of Firearms) and frustrated murder. He pleaded "not guilty" to both charges.<sup>[5]</sup>

Apolonio was hospitalized in Pasig for a month. He was transferred to the Batangas Regional Hospital where he stayed for twenty-seven (27) days.<sup>[6]</sup>

On December 23, 1993, Apolonio died. His death certificate stated the cause of death as follows:<sup>[7]</sup>

"Immediate cause:	a. Cardiac Arrest
"Antecedent cause:	b. Cardiac Failure
"Other significant conditions contributing to death:	c. Cervical Spine Injury due to bullet wound"

On February 2, 1994, the prosecution<sup>[8]</sup> amended the information murder due to Apolonio's supervening death. As amended, the information reads:<sup>[9]</sup>

"That on or about the 2nd day of October 1993 in the Municipality of Pasig, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above named accused, armed with a gun, with intent to kill and with treachery and evident premeditation, did then and there willfully, unlawfully and feloniously attack, assault and shoot one APOLONIO HORNILLA with the said gun hitting him on the vital parts of his body thereby inflicting upon him mortal wounds which directly caused his death.

"CONTRARY TO LAW."

On March 17, 1994, accused entered a plea of "not guilty" to the amended charge.<sup>[10]</sup>

At the trial, accused's defense was alibi and denial. He averred that when the shooting occurred, he was unloading vegetables from a jeep.<sup>[11]</sup> His testimony was uncorroborated. The trial court did not believe him.

On June 26, 1995, the trial court rendered a decision convicting accused of murder and acquitting him of illegal possession of firearms, to wit:[12]

"WHEREFORE, judgment is hereby rendered as follows:

"(a) In Criminal Case No. 101921, on the basis of reasonable doubt, the accused is ACQUITTED of the crime charged.

"(b) In Criminal Case No. 101922, the accused is found GUILTY beyond peradventure of doubt of the crime of Murder defined and penalized under Article 248 of the Revised Penal Code and is hereby sentenced to Reclusion Perpetua in its medium period or an imprisonment ranging from Twenty-Six (26) Years, Eight (8) Months and One (1) Day, as minimum, to Thirty-Three (33) Years and Four (4) Months, as maximum; to indemnify the offended party in the aggregate amount of P222,748.22; to suffer all the accessory penalties provided for by law; and to pay the costs.

"SO ORDERED."

On July 26, 1995, accused filed a notice of appeal.[13] However, the notice was erroneously forwarded to the Court of Appeals.[14]

On November 25, 1996, we resolved to accept the appeal.[15]

Here, accused-appellant pleads that the judgment of the trial court be modified to a conviction for homicide, alleging that the qualifying circumstance of treachery was not proven.[16]

We do not agree.

There was treachery. In crimes against persons, treachery exists when the accused employs means, methods and forms which directly and specially ensure its execution, without risk to himself arising from the defense which the offended party might make.[17]

Apolonio was attending to his trade, weighing meat, when he was shot by appellant on the nape. At that moment, he was unaware of the fatal attack to befall him. He was not given an opportunity to defend himself or to retaliate.

There is treachery even if the crime is perpetrated frontally provided the attack is sudden and unexpected, and the victim is unarmed.[18] In this case, there was a swift and unexpected attack against an unarmed victim, who did not give the slightest provocation.[19]

Given the facts, we cannot lessen the conviction to one for homicide.

The penalty imposed by the trial court is erroneous. When the crime was committed, the penalty for murder is *reclusion temporal* maximum to death.[20] In the absence of aggravating or mitigating circumstances, the imposable penalty is *reclusion*