

## EN BANC

[ G.R. No. 125005, October 03, 2000 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
MARCELO CABILES Y ANGUSTIA, EMERITO DELOS REYES Y  
NARANJO ALIAS "EMY," ACCUSED-APPELLANTS.**

### DECISION

#### QUISUMBING, J.:

For automatic review is the decision of the Regional Trial Court of Urdaneta City, Pangasinan, Branch 46 in Criminal Cases Nos. U-8389, U-8390, U-8391, and U-8392, the dispositive portion of which reads:

"WHEREFORE, in view of all the foregoing, the Court finds:

"IN CRIMINAL CASE NO. U-8390:

"the accused MARCELO CABILES<sup>[1]</sup> y ANGUSTIA GUILTY beyond reasonable doubt of the crime of ATTEMPTED HOMICIDE and applying the Indeterminate Sentence Law, hereby sentences him to suffer an indeterminate penalty of 6 months of *Arresto Mayor* in its maximum period, as MINIMUM, to 2 years, 4 months and 1 day of *Prision Correccional* in its medium period, as MAXIMUM and to pay the costs.

"IN CRIMINAL CASE NO. U-8389:

"the accused EMERITO DE LOS REYES y NARANJO alias "Emy" GUILTY beyond reasonable doubt of the crime of Illegal Possession of Firearm(s) and Ammunitions (Presidential Decree No. 1866) and hereby sentences him to suffer imprisonment of RECLUSION PERPETUA and to pay the costs.

"IN CRIMINAL CASE NO. U-8391:

"the accused MARCELO CABILES y ANGUSTIA GUILTY beyond reasonable doubt of the crime of Illegal Possession of Firearm(s) and Ammunitions (Presidential Decree No. 1866) and hereby sentences him to suffer imprisonment of RECLUSION PERPETUA and to pay the costs.

"IN CRIMINAL CASE NO. U-8392:

"the accused MARCELO CABILES y ANGUSTIA and EMERITO DE LOS REYES y NARANJO alias "Emy" GUILTY beyond reasonable doubt of the crime of MURDER defined and penalized under Republic Act No. 7659, otherwise known as the Heinous Crime Law, the offense having been

committed with the generic aggravating circumstances of taking advantage of superior strength and dwelling, hereby sentences EACH OF THEM the ultimum supplicium to DEATH; to pay jointly and severally the heirs of the victim MOISES PAMARANG, SR. in the amount of P50,000.00 as indemnity, P11, 000.00 as actual damages, P200,000.00 as moral damages and to pay the costs.

"Finally it is said: '*Dura lex, sed lex*' interpreted as "The law is harsh, but that is the law.

"SO ORDERED."<sup>[2]</sup>

The facts of this case, according to the trial court, are as follows:

Sometime between 7:30 to 8:00 P.M. of February 2, 1994, two persons went to the house of Moises Pamarang, Sr., calling out "Apo!." Arman<sup>[3]</sup> Pamarang, son of the victim, who was then watching television in his grandfather's house, a few meters away from his parents' house, saw the duo. Thinking that the two were interested in buying something from their store, Arman went to their house and stood behind the two, whom he recognized as appellants Emerito delos Reyes and Marcelo Cabiles.

Meanwhile, the victim's wife, Estelita Pamarang, who also heard the call, went to their front door, which also served as the door of their store. The area was lighted as there was a fluorescent light on the awning above the front door. She recognized appellants delos Reyes and Cabiles standing outside, with her son Arman behind them. The two were fellow *barangay* residents who cultivated the land opposite the victim's family farm.

Upon seeing Estelita, appellant Cabiles muttered that he had something to tell her husband. Estelita replied that her husband was already asleep and asked them to return the next day. After a few moments, however, the victim arrived and asked appellants what they wanted. Suddenly, Cabiles pulled out a handgun and shot the victim in the mouth. The latter fell and while Estelita was holding him up, delos Reyes moved forward and shot the victim in the stomach with a long firearm. Cabiles fired a second shot, hitting Moises in the chest. The two gunmen then hurriedly left.

Seconds later, Arman rushed in to assist the victim, his father, while Estelita shouted for help. Moises, Jr., another son of the victim who was playing cards in his grandmother's house, heard the gunshots and the shouts of his mother and immediately rushed to their house. He met appellant Cabiles, who had just come out of their front gate. Suspecting that Cabiles was responsible for his mother's shouts for help, Moises, Jr. followed him and upon catching up, boxed Cabiles' nape. Cabiles shot him but missed. Cabiles began to run. When he noticed Moises, Jr., still dodging him, Cabiles fired at him again, missed a second time. Moises, Jr., decided not to press his luck and instead went home. By then, Moises, Sr., was dead.

When police officers arrived, they were informed by Moises, Jr., that he knew the person who killed his father. Moises, Jr., who accompanied the policemen to the residence of appellant Cabiles, pointed him out as the killer. Cabiles was taken into custody and Estelita and Arman were summoned to the police station. When confronted with Cabiles, however, Estelita, failed to identify him as one of the

persons who shot her husband. Moises, Jr. and Arman, who were present, likewise failed to identify Cabiles.

At around 1:00 o'clock in the morning the following day, both Cabiles and delos Reyes were brought to the police station for re-investigation. This time, Estelita identified him as one of her husband's killers. She explained that she was not able to pinpoint him previously because his hair was brushed up; during the night of the incident his hair was brushed down. She also was then still in shock. Estelita also identified appellant delos Reyes as the other gunman. The two were placed in detention. Appellants asked that they undergo a paraffin test. These yielded negative results.

The autopsy on the cadaver showed that the victim had sustained gunshot wounds on his mouth, stomach, and chest. Two slugs were recovered from his body. The cause of death was "*hypovolamic shock secondary to intrathoracic hemorrhage, secondary to gunshot wound, lungs.*"<sup>[4]</sup>

Complaints were filed in the Municipal Trial Court of Urdaneta for Murder against Emerito delos Reyes and Marcelo Cabiles; for Attempted Murder against Cabiles; for Illegal Possession of Firearm and Ammunition against delos Reyes; and for Illegal Possession of Firearm and Ammunition against Cabiles. After preliminary investigation, the municipal court judge found that no *prima facie* case existed, and recommended that the cases be dismissed. The investigating judge's recommendation was forwarded to the Office of the Provincial Prosecutor for review.

On March 31, 1995, notwithstanding the recommendation of the investigating municipal judge, the Office of the Provincial Prosecutor of Pangasinan filed the following separate informations with the court *a quo*:

Criminal Case No. U-8389:

"The undersigned accused EMERITO DELOS REYES Y NARANJO alias "EMY" of the crime of ILLEGAL POSSESSION OF FIREARMS AND AMMUNITION, committed as follows:

"That on or about the 2nd day of February, 1994, at barangay Camantiles, municipality of Urdaneta, province of Pangasinan, and within the jurisdiction of this Honorable Court, the said accused did then and there, wilfully, unlawfully and feloniously (sic) have in his possession, control and custody one (1) long firearm with ammunitions without securing first the necessary authority or license to possess and carry the same, and which firearm he used in shooting to death Moises Pamarang y Uminga.

"CONTRARY TO P.D. No. 1866"<sup>[5]</sup>

CRIMINAL CASE No. U-8390:

"The undersigned accuses MARCELO CABILES Y ANGUSTIA of the crime of ATTEMPTED MURDER, committed as follows:

"That on or about the 2<sup>nd</sup> day of February, 1995 (sic) at barangay Camantiles, municipality of Urdaneta, province of Pangasinan, and within the jurisdiction of this Honorable Court, the said accused with intent to kill and with treachery, did then and there, wilfully, unlawfully, and feloniously (sic) shoot one Moises Pamarang Jr., y Villota for two (2) times but missed with the use of a firearm, thus the accused commenced the commission of the crime of Murder directly by overt acts but did not produce it by reason of some cause other than his spontaneous desistance, that is, the victim was able to run away from said accused.

"Contrary to Art. 248, in relation to Art. 6, Revised Penal Code."<sup>[6]</sup>

CRIMINAL CASE No. U-8391:

"The undersigned accuses MARCELO CABILES Y ANGUSTIA of the crime of ILLEGAL POSSESSION OF FIREARMS AND AMMUNITIONS, committed as follows:

"That on or about the 2<sup>nd</sup> day of February, 1994, at barangay Camantiles, municipality of Urdaneta, province of Pangasinan, and within the jurisdiction of this Honorable Court, the said accused did then and there, wilfully, unlawfully and feloniously (sic) have in his possession, control and custody one (1) short firearm with ammunitions without first securing the necessary authority or license to possess and carry the same, and which firearm he used in shooting to death Moises Pamarang y Uminga.

"CONTRARY to Presidential Decree No. 1866."<sup>[7]</sup>

CRIMINAL CASE No. U-8392:

"The undersigned accuses MARCELO CABILES Y ANGUSTIA and EMERITO DELOS REYES Y NARANJO alias "EMY" of the crime of MURDER, committed as follows:

"That on or about the 2<sup>nd</sup> day of February, 1994 at barangay Camantiles, municipality of Urdaneta, province of Pangasinan, and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill, conspiring, and helping each other, and with treachery and evident premeditation, did then and there, wilfully, unlawfully and feloniously (sic) attack and shoot one Moises Pamarang y Uminga with the use of firearms hitting and inflicting the latter with mortal wounds which caused his death, to the damage and prejudice of his heirs.

"CONTRARY to Article 248, Revised Penal Code."<sup>[8]</sup>

Upon arraignment, appellants, with the assistance of counsel *de parte*, pleaded "NOT GUILTY" to each of the foregoing informations. The four cases were tried jointly.

At the trial, appellants interposed the defense of denial and alibi. The trial court summed up appellant Cabiles' defense as follows:

"On February 2, 1994, at around 6:30 o'clock in the evening, he and his 3-year old son Mark Hausen, went to the house of Eddie Gandesa, his business partner in the chainsaw business, by riding in his motorized tricycle which he owned to inform him that somebody would like to have his tree cut. He conversed with Gandesa (and) with his four (4) visitors and at around 8:00 o'clock in the evening he asked permission to leave and proceeded to the house of Arsenia Garcia to buy rice but unable to purchase as there was no available rice for sale. They arrived in (sic) his house at around 8:20 o'clock and parked his tricycle on (sic) the yard of Francisca Angelito. After five minutes his co-accused Emerito delos Reyes, whose house is about 40 meters away and his acquaintance since 1992, arrived and asked for his tricycle as he would like to carry passengers for a fee. When delos Reyes left, Francisca Angelito went to his house bringing with her cooked *camoteng cahoy* which they ate together with Ernesto "Boy" Alvarez, who went to fetch water from their pumpwell for his cow. At around 9:00 o'clock a police patrol car went to the house of his co-accused delos Reyes and thinking that the latter met an accident in town he went out to observe. The police was asking from the wife of the accused delos Reyes the whereabouts of her husband but the former was told that he was out driving a tricycle for hire. The police then went to the place where he was and was asked if he saw a motorcycle with three (3) persons on board passed (sic) by their place as somebody was killed. Then Police Officer Ganceña told him that because he is a stranger in the place and somebody was killed it was better for him to go to the police headquarters to clear doubts on his part, as the wife of the victim said that she could identify the killers if she could see them. Before they left, the police told to (sic) the wife of his co-accused to tell the latter to go to the police when he arrives. At the police station, Estelita Pamarang, wife of the victim, when he was shown to her for identification, failed to identify him. Arman Pamarang and Moises Pamarang, Jr., children of Estelita Pamarang were also there and they did not say anything when their mother was not able to pinpoint him as one of the killers of the victim Moises Pamarang, Sr...

"On February 3, 1994 at around 1:00 o'clock in the morning, the police returned and took him again to the police headquarters at Urdaneta, Pangasinan where he saw Estelita Pamarang, Arman Pamarang and Moises Pamarang, Jr. again but most of all he saw his co-accused Emerito delos Reyes. The wife of the victim pointed and identified him and his co-accused (as the ones) who killed the victim which he denied. They were then incarcerated. They asked for a paraffin examination which was done, the result of which is "negative."<sup>[9]</sup>

Appellant delos Reyes' version was narrated by the court as follows:

"That around 7:00 o'clock in the evening of February 2, 1994, he was getting water for his 3 cows to drink at the water pump of his neighbor Alfredo Ladines and when he noticed that the tricycle of his co-accused Marcelo Cabiles arrived (sic) he changed his clothes and got the key of