

## FIRST DIVISION

[ G.R. No. 122746, January 29, 1999 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. MARIO VILLANUEVA Y FAUSTINO, ACCUSED-APPELLANT.**

### D E C I S I O N

**DAVIDE JR., C.J.:**

In a decision<sup>[1]</sup> rendered in Criminal Case No. 93-127826, the Regional Trial Court of Manila, Branch 28, found accused-appellant MARIO VILLANUEVA y FAUSTINO (hereafter MARIO) guilty beyond reasonable doubt of murder as charged, and sentenced him to suffer the penalty of *reclusion perpetua* and to pay P50,000.00 as death indemnity, P53,800.00 as actual damages, P1,663,668.00 for the loss of earning capacity of the victim, P50,000.00 as moral damages, and the costs of suit.

The Information charged MARIO with murder allegedly committed as follows:

That on or about September 19, 1993 in the City of Manila, Philippines, the said accused conspiring and confederating with one whose true name, real identity and present whereabouts are still unknown and mutually helping each other, did then and there wilfully, unlawfully and feloniously, with intent to kill and with evident premeditation and treachery, attack, assault and use personal violence upon one JOAQUIN NACIONAL Y BANEZ by then and there shooting the latter with an unknown caliber revolver hitting him at the back of his right ear, thereby inflicting upon the said Joaquin Nacional y Banez a mortal gunshot wound which was the direct and immediate cause of his death.<sup>[2]</sup>

MARIO pleaded not guilty upon his arraignment on 17 December 1993.<sup>[3]</sup>

Witnesses for the prosecution were Adelfa Nacional, Bienvenida Nacional, PO3 Rosales M. Fernandez, PO3 Ireneo Manalili and Dr. Maximo Reyes. Witnesses for the defense were MARIO, Domingo Peliño, Eva Torio and Edmundo Ventura.

Adelfa Nacional, the wife of Joaquin Nacional, the victim, testified that on 19 September 1993, at around 10:00 p.m., in Area C, Parola Compound, Tondo, Manila, she fetched Joaquin from a wake. Before proceeding home, they first bought cigarettes from a store owned by Joaquin's sister, Bienvenida Nacional. While they were buying cigarettes, Adelfa was about one arm's length to the left of Joaquin. She noticed two persons walk behind them. One of the two, whom she identified as MARIO, moved to about a foot and a half behind her husband, pulled out a gun from his waist, pointed the gun below her husband's right ear and shot her husband. MARIO and his companion then ran towards a nearby alley. Joaquin fell to the ground. Adelfa shouted for help. According to Adelfa, the crime scene was illuminated by a fluorescent lamp.<sup>[4]</sup>

Adelfa recognized MARIO because she often saw him at the plaza, which was near Adelfa's house and which was a usual venue for cockfights. She remembered that about a year before the incident, she saw her husband in front of their house having an "altercation" with MARIO over a cockfight.<sup>[5]</sup>

Adelfa again saw MARIO on the night of 22 September 1993 at the police station after she and Bienvenida Nacional were informed that MARIO had been apprehended. From a line-up of eight persons, Adelfa identified Mario as her husband's killer.<sup>[6]</sup>

Adelfa spent P32,000.00 for her husband's coffin and P5,000.00 during the wake. Other expenses related to her husband's funeral were paid for by her mother-in-law.

Adelfa further testified that her husband earned about P2,500.00 a week from selling fish, and that because of his death, she suffered grief and wounded feelings, which could not "be paid in terms of money."<sup>[7]</sup> Moreover, she also lost someone who could help her.<sup>[8]</sup>

The prosecution wanted to present Yolanda Nacional, the victim's mother, to prove the amount spent for funeral expenses, but the defense stipulated that the victim's heirs spent P53,800.00 for the purpose.<sup>[9]</sup>

Bienvenida Nacional, the victim's sister, corroborated Adelfa's testimony as to the circumstances attending the commission of the crime, but as viewed from a different angle since Bienvenida was positioned about one arm's length in front of the victim. She tried to help lift her brother after he was shot, but in her nervousness and fear from seeing blood flow from her brother's head, she was unaware that she had already run to the police station to get help. At the station, she had the incident recorded in the police blotter and gave a physical description of MARIO and his companion. She was informed on 22 September 1993 that MARIO had been apprehended.<sup>[10]</sup>

Bienvenida surmised that the killing of her brother Joaquin was due to an altercation between him and MARIO over a bet in a cockfight. During that altercation, which occurred at the plaza some ten days before the incident, Bienvenida pacified the two and told her brother to go home, and the latter obeyed. She described her brother as the calmer one between the two, and that during the altercation, he answered MARIO's grave and serious curses with less grave curses.<sup>[11]</sup> This altercation was different from that reported by Adelfa which occurred a year before the crime.

PO3 Rosales M. Fernandez arrested MARIO on the night of 22 September 1993, after following a lead provided by another officer. Later that night, Fernandez arranged a police line-up where Adelfa Nacional pointed out MARIO as her husband's killer. Fernandez divulged that MARIO was not assisted by counsel at the line-up, and admitted that Edgar Rioferio was also arrested but the inquest fiscal ordered his release.<sup>[12]</sup>

PO3 Ireneo Manalili received Bienvenida Nacional's report on the night of the incident and entered it in the police blotter.<sup>[13]</sup> With Bienvenida, he went to the

crime scene to investigate.

Dr. Maximo Reyes, National Bureau of Investigation Medico-Legal Officer, conducted the post-mortem examination on the victim. His findings were summarized in an autopsy report<sup>[14]</sup> as follows:

Cyanosis, lips and nailbeds.

Contused abrasions: zygomatic area, right 2.0 x 2.0 cms.; mandibular area, medial aspect, 1.0 x 0.5 cm.

Gunshot wound, entrance, ovaloid, 0.7 x 0.8 cm., contusion collar widest at its infero-lateral border, edges inverted with area of smudging and tattooing, 5.0 x 4.0 cms., located at the scalp, post-auricular area, right, 3.0 cms. behind and 0.5 cm. above the right external auditory meatus, directed forwards, upwards and medially, involving the scalp, fracturing the right temporal bone, into the cranial cavity, penetrating the right temporal lobe at the brain where a deformed bullet was lodged and subsequently recovered.

Other visceral organs, congested.

Stomach, contains small amount of rice and other partially digested food particles.

#### CAUSE OF DEATH: GUNSHOT WOUND AT THE HEAD.

The fatal bullet entered from behind the victim's right ear with an upward trajectory, thus it was retrieved in the right temporal area. There was smudging or tattooing at the bullet's entry point, indicating that the muzzle of the gun was between three to six inches away from said entry point. There were abrasions on the right zygomatic area, that is, below the eye, indicating that the victim fell to the ground on his face with force.<sup>[15]</sup>

Domingo Peliño, the first defense witness, testified that he and MARIO were neighbors in Parola Compound, Tondo. On 19 September 1993, between 9:00 to 10:00 in the evening, Peliño went to MARIO's house to ask for help in replacing a fuse in Peliño's fuse box at his house. MARIO was not at home, however, because according to his wife, MARIO was in Malinta, Caloocan City. After the incident in question, Peliño heard rumors from his neighbors that MARIO was involved in said incident; and after he learned of MARIO's arrest, Peliño went to police headquarters to ask MARIO about the killing. MARIO said that he had nothing to do with the killing. Peliño then executed an affidavit attesting to MARIO'S innocence, which he filed with the City Prosecutor's Office.<sup>[16]</sup>

Eva Torio testified that she knew MARIO as the brother of her neighbor and friend Nilda. On 19 September 1993, at about 2:00 p.m., MARIO brought carabao skin to the Torio residence at Sitio Gitna, Kaybiga, Caloocan City, for Eva's husband's birthday party. From 2:00 to 4:00 that afternoon, MARIO, one Boyet, and Eva's husband prepared and cooked the carabao skin. The group brought five cases of beer then engaged in a drinking session. She stayed with the group, although she did not join in the drinking but only sat beside her husband. She slept at 10:30

p.m. while the three were still drinking. The next morning, at around 6:00 p.m., Torio went to Nilda's house where MARIO slept. She asked him to build a fusebox for her, which he completed between 8:00 to 9:00 that morning.<sup>[17]</sup>

Edmundo Ventura testified that he joined in the drinking session, which lasted until midnight. MARIO never left the group except when he took his dinner, but he returned shortly thereafter. When the drinking session ended, Ventura left with MARIO and a certain Rony Macapobre, and Ventura saw MARIO enter Nilda's house.<sup>[18]</sup>

MARIO reiterated the story told by the defense witnesses. The trial court summarized his testimony as follows:

[T]hat on September 19, 1993, at 10:00... in the evening, he was in Sitio Gitna, Kaybiga, Kalookan City; that he left his house that day at about 10:30 in the morning, passed by Divisoria and bought carabao and cow skins or hides, which he bought with him to Gitna to be cooked or made into kilawin as pulutan in the house of Jun Torio; that they finished cooking at 4:00 p.m. and after they had bought beer they started drinking up to 12:00... midnight; that he did not leave Sitio Gitna, Kaybiga, Kalookan City; and that he went home to his house in Area C, Parola Compound, Tondo, Manila, on September 20, 1993, at 11:00... in the morning.<sup>[19]</sup>

Additionally MARIO explained that the victim was once a friend of his but Adelfa Nacional accused him of killing the victim because sometime in 1992, "in a highway near [MARIO's] place," the victim lost P20.00 to MARIO in a game of *cara y cruz*.<sup>[20]</sup> The victim's family also harbored ill feelings towards MARIO because he refused to testify for Joaquin Nacional in two criminal cases, including one for the killing of a son of MARIO's compadre, where Joaquin Nacional was one of the accused.<sup>[21]</sup>

In its decision<sup>[22]</sup> of 14 June 1995 the trial court gave full faith and credence to the testimonies of the witnesses for the prosecution, describing them as candid, straightforward and frank. The trial court took judicial notice of the volume of traffic from Caloocan City to Tondo, and concluded that it was not impossible for MARIO to have been at the scene of the crime at the time of its commission. The trial court likewise dismissed MARIO's contention that the Nacionales wanted to get even with him for his refusal to testify for Joaquin Nacional in the criminal cases filed against the latter. The court noted that these cases were filed several years before the victim was even married, hence MARIO's refusal to testify was inconsequential.

The trial court determined that there was treachery in the killing of Joaquin Nacional since the attack came from behind the victim with a concealed weapon which was suddenly fired at the victim. The victim was completely unaware of the attack and was thus totally defenseless. The court then decreed as follows:

WHEREFORE, finding the accused guilty beyond reasonable doubt of the crime of murder in the shooting of Joaquin Nacional y Banez, the accused, Mario Villanueva, is hereby sentenced to suffer the penalty of reclusion perpetua, the medium period of the penalty prescribed for murder under Article 248 of the Revised Penal Code, there being no

mitigating or aggravating circumstance. The duration of said penalty shall be that provided in Article 27 of the Revised Penal Code before it was amended by R.A. No. 7659.

The accused is ordered to indemnify the heirs of Joaquin Nacional in the sum of P50,000.00; to pay the widow, Adelfa Nacional, and the mother, Yolanda Nacional, actual damages in the sum of P53,800.00; to pay the heirs of Joaquin Nacional for the loss of earning capacity of the said deceased in the sum of P1,663,680.00; and to pay moral damages to the widow, Adelfa Nacional, in the sum of P50,000.00; and finally, the accused must pay the costs.

SO ORDERED.

The award for loss of earning capacity was computed in accordance with the decision in *Monzon v. Intermediate Appellate Court*.<sup>[23]</sup> His Motion for reconsideration<sup>[24]</sup> having been denied by the trial court in its order<sup>[25]</sup> of 18 September 1995, MARIO interposed this appeal.

In his Appellant's Brief MARIO claims that the trial court erred in:

1. not giving credit to the accused-appellant's testimony and that of his witnesses, and in disregarding his defense of alibi;
2. giving credence to the testimonies of the two prosecution witnesses, who are related to the victim; and in holding that the accused-appellant was positively and spontaneously identified by these prosecution witnesses; and
3. concluding that the guilt of the accused for the crime of murder has been established by evidence beyond reasonable doubt.

As to the first error assigned, MARIO scores the trial court for venturing into conjecture, particularly in the following portion of the decision:

Sitio Gitna, Kaybiga, Kalookan City is located midway between, and lies along Gen. Luis Street which joins Novaliches and the Valenzuela Exit of the North Expressway. General Luis St. is a two lane road where many vehicles, private and public, pass everyday, but as the day wanes and advances into the night the traffic volume lessens at between the hours of 9:00 and 11:00 and travel is fast either way to Novaliches or to the North Expressway, such that in less than an hour, one can get to Tondo, Manila, whether through Novaliches along Quirino Highway to Balintawak, or from Valenzuela Exit along the North Expressway to Balintawak, then EDSA to Grace Park, Kalookan City, then to J. Abad Santos Avenue to Tondo. Of these facts this court can take judicial notice. And in a taxicab, of which the accused by his own testimony, is a driver, the travel time will be much less. It was not physically impossible for the accused to be at the scene of the shooting of Joaquin Nacional.<sup>[26]</sup>