

SECOND DIVISION

[G.R. No. 119077, February 10, 1999]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
MARIANO VERDE, ACCUSED-APPELLANT.**

D E C I S I O N

MENDOZA, J.:

This is an appeal from the decision^[1] of the Regional Trial Court of Himamaylan, Negros Occidental, Branch 55, finding accused-appellant Mariano Verde guilty of murder for the killing of Francisco Gealon on March 19, 1991, and sentencing him to suffer the penalty of *reclusion perpetua* and to pay the heirs of the deceased the amounts of P100,000.00, as moral damages, and P100,000.00, as compensatory damages.

Francisco Gealon was shot dead at around 9 o'clock in the evening, on March 19, 1991, while sleeping inside his tricycle in front of the house of Jose Bandiola in Binalbagan, Negros Occidental. He was taken to the Himamaylan Hospital where he was pronounced dead on arrival.^[2]

The information charged

That on or about the 19th day of March, 1991, in the Municipality of Binalbagan, Province of Negros Occidental, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with handgun, with evident premeditation and treachery and with intent to kill, did then and there, wilfully, unlawfully and feloniously attack, assault and shoot one FRANCISCO GEALON y PINEDA, thereby inflicting gunshot wound upon him which caused his death.^[3]

Accused-appellant pleaded not guilty to the charge upon being arraigned on November 25, 1991.^[4] Trial then ensued, with the prosecution presenting as its first witness Modesto L. Cajita, agent-in-charge of the National Bureau of Investigation (NBI) sub-office in Bacolod City. Cajita testified that in the course of his investigation he found two eyewitnesses, Noli Camarines and Felix Mueda, Jr., on the basis of whose sworn statements together with the autopsy report of Dr. Ricardo Jaboneta and the death certificate issued by Dr. Rosemarie T. Vidal a complaint for murder was filed against accused-appellant in the Municipal Trial Court of Binalbagan, Negros Occidental.^[5]

Dr. Rosemarie T. Vidal, resident physician at the Gov. Valeriano Gatuslao Memorial Hospital in Binalbagan, also testified. She said that Francisco Gealon was brought to the hospital at around 9:20 p.m. on March 19, 1991, but he was dead on arrival. The cause of death of Francisco Gealon was cerebral hemorrhage as a result of a fatal gunshot wound in the head. She also recovered a slug which she gave to Atty.

Modesto Cajita. Dr. Vidal explained that Francisco Gealon had already been dead 15 to 30 minutes before he was brought to the hospital. She further said that the slug had entered through the upper part of the head at the right temporal area and that she recovered it from the left temporal area of Francisco's head.^[6]

On the other hand, Dr. Ricardo Jaboneta, medico-legal officer of the NBI, testified that he had the body of Francisco Gealon exhumed and that he conducted an autopsy on it. His examination revealed a gunshot wound in the head of the cadaver. The entrance of the wound showed that the assailant could have been at the rear portion of the right side of the victim. The probable cause of death was "hemorrhage-massive and extensive with a skull fracture secondary to gunshot wound on the head." He also made an exhumation report which contains his findings. On cross-examination, Dr. Jaboneta said that the direction of the wound was slightly upward.^[7]

Delia Gealon, widow of Francisco Gealon, testified that she has three children by Francisco. At the time of his death, Francisco was 48. She never expected her husband to be murdered as he had no enemies and he was in good health. Francisco was buried on April 16, 1991, after lying in state for 18 days. She spent thousands of pesos for the funeral, as evidenced by receipts and other documents. She also incurred expenses in hiring the services of counsel in this case. When Francisco was still alive, according to Delia Gealon, he worked daily as a tricycle driver, earning no less than P200 a day.^[8]

An eyewitness account of the shooting was given by Noli Camarines. According to him, Francisco Gealon promised to pick him up in his tricycle at Binalbagan in the evening of March 19, 1991. He said he and a companion, Elmer, went to the house of Jose Bandiola in Binalbagan at around 7 o'clock in the evening to attend Bandiola's birthday party. Among those present was accused-appellant Mariano Verde. He knew accused-appellant even before as the latter was often at the cockpit. However, it was only at the party that they were introduced to each other. Camarines said that, at around 8 o'clock in the evening, Francisco Gealon arrived. He introduced himself to the host saying, "Jose, you might have already forgotten me, we were neighbors before at Barangay Progreso." Francisco had parked his tricycle in front of the gate of the house. At that time, according to this witness, he and other guests were seated at a table about three arms length away from the gate of the house. He could see Francisco Gealon's tricycle from where he was seated. According to Camarines, Francisco joined them at the table and drank beer. Shortly thereafter, he said, they noticed that accused-appellant Mariano Verde was no longer with them at the table. Francisco himself left after a while to go to the sidecar of his tricycle to sleep. After some time, according to Camarines, he saw accused-appellant Mariano Verde approach the tricycle where Francisco was sleeping. After checking who was inside the tricycle, accused-appellant allegedly stepped back, took his revolver from his hip pocket, and shot Francisco Gealon in the head. Accused-appellant then fled. Noli Camarines rushed to Francisco and took him to the hospital, but Francisco was dead on arrival.^[9]

The presentation of Felix Mueda, Jr. as a prosecution witness was dispensed with as the parties agreed to have his testimony during the hearing for the application for bail before the Municipal Trial Court of Binalbagan part of the record.^[10] Mueda, Jr. testified that as he was nearing the house of Jose Bandiola where a party was going

on, he saw the tricycle of Francisco Gealon which was parked; that he saw a man bend over the person sitting inside the sidecar; that he saw the man shoot the inside of the sidecar and recognized him to be accused-appellant as he fled past him.^[11]

Arcadio Gealon, elder brother of Francisco Gealon, said that his first cousins, Ireneo and Severino Gealon, had been suspected by accused-appellant's family of involvement in the killing of Paredes Verde, Jr. in 1968. Accused-appellant's father, Paredes Verde, Sr., was former mayor of Binalbagan. The case against Ireneo and Severino was dismissed by the Regional Trial Court. Arcadio Gealon said that, in fact, in December 1990, while he was waiting for a ride in front of Binalbagan Catholic College, he was told by accused-appellant, "we have a long standing grudge with the family of Gealon." Arcadio said he was surprised and taken aback upon being told this. Hence, when a tricycle came along, he lost no time getting away from accused-appellant.^[12]

For his defense, accused-appellant interposed alibi.

Accused-appellant Mariano Verde testified that he had been the barangay captain of Barangay Sto. Rosario in Binalbagan since 1989. In the afternoon of March 19, 1991, he went to the house of Jose Bandiola to attend the latter's birthday party. He stayed there until around 6:30 in the evening when he left to attend a wake on Magallanes Street, about 200 meters away from Bandiola's house. Accused-appellant denied that he had been introduced to Francisco Gealon. He likewise denied having noticed a tricycle outside Jose Bandiola's house because, according to him, he passed through the backyard of the house. Accused-appellant said he arrived at the wake at Tamona's house at about 7 o'clock in the evening and played "pusoy" with Fred Dangan, Estalin Villanueva, and Jose Javier until the early morning of the following day. From the time he started playing "pusoy," he never left the house of Tamona. At around 8 o'clock, while he was playing, he said he heard a gun report. One of his companions called his attention to this, but he dismissed it because "anyway it's quite far away." He left Rodolfo Tamona's house at around 6 o'clock in the morning of the following day. He heard rumors that someone was shot in front of Bandiola's house. He claimed that he did not know Noli Camarines, Felix Mueda, Jr., and Arcadio Gealon until they testified against him in court. He said that his brother, Paredes Verde, Jr., died a long time ago when he was still ten years old.^[13]

On cross-examination, accused-appellant said that he was suspended and eventually removed as barangay captain as a result of the filing of the present case. He did not know who killed his brother Paredes Verde, Jr. Neither did he know why he was killed. He did not bother to inquire from his father or his other brothers who killed Paredes Verde, Jr. He came to know that his brother had been killed by a Gealon only after this case had been filed against him in July 1991. He added that it took him 30 minutes to walk from Bandiola's house to Rodolfo Tamona's house, which is 200 meters away.^[14]

Alfredo Dangan, who belonged to the same barangay as accused-appellant, also testified. He said that in the evening of March 19, 1991, he attended a wake in the house of Rudy Tamona. Accused-appellant was also there at around 7 o'clock in the evening and played "pusoy" with them. At around 8 o'clock, they heard an

explosion. Alfredo said that when someone called accused-appellant's attention to the gunfire, the latter simply said, "Never mind that, that is far from this place." According to Alfredo, the gun report came from a distance of about 200 meters from the place where they were playing. They, therefore, continued playing until the morning of the following day. On cross-examination, Alfredo said he volunteered to testify on behalf of accused-appellant because the latter is their barangay captain. [15]

Rodolfo Tamona, who is the owner of the house where accused-appellant was allegedly playing "pusoy" at the time of the killing, testified that he had been a resident of Binalbagan for 20 years. Accused-appellant, who was their barangay captain, was in his house on March 19, 1991, from 7 o'clock in the evening until 5 o'clock in the morning of the following day playing "pusoy." Accused-appellant was with Rey, Fred, Joseph, and Allan. Rodolfo said he also heard a gun report at around 7 o'clock in the evening, but accused-appellant did not pay attention to it because it seemed "quite far." On cross-examination, Rodolfo testified that from his house, it would take around 15 to 20 minutes to go to Jose Bandiola's house. [16]

On May 11, 1994, the trial court rendered a decision, the dispositive portion of which reads:

WHEREFORE, premises considered, the court hereby finds accused Mariano Verde GUILTY beyond reasonable doubt of the crime of murder and sentences him to a prison term of *reclusion perpetua* and to indemnify the heirs of the victim in the amount of P100,000.00 as compensatory damages and P100,000.00 as moral damages without subsidiary imprisonment in case of insolvency. [17]

Aggrieved, accused-appellant filed this appeal contending that:

- I. - THE TRIAL COURT ERRED IN HOLDING THAT PROSECUTION WITNESS NOLI CAMARINES POSITIVELY IDENTIFIED ACCUSED-APPELLANT AS THE PERSON WHO SHOT FRANCISCO GEALON.
- II. - THE TRIAL COURT ERRED IN HOLDING THAT PROSECUTION WITNESS NOLI CAMARINES HAD NO OTHER MOTIVE WHEN HE TESTIFIED BUT TO TELL THE TRUTH.
- III. - THE TRIAL COURT ERRED IN HOLDING THAT THE PROSECUTION ESTABLISHED THE MOTIVE OF THE ACCUSED-APPELLANT IN CARRYING OUT HIS EVIL DESIGN TO KILL FRANCISCO GEALON.
- IV. - THE TRIAL COURT ERRED IN DISREGARDING SALIENT FACTS AND EVIDENCE OF RECORD, WHICH ARE EXCULPATORY OF THE ACCUSED-APPELLANT.
- V. - THE TRIAL COURT ERRED IN NOT ACQUITTING ACCUSED-APPELLANT OF THE OFFENSE CHARGED. [18]

Accused-appellant contends that the testimony of prosecution witness Noli Camarines should not have been given credence by the trial court. Citing Jose Bandiola's sworn statement (Exh. 4), he contends that it was impossible for

Camarines to have witnessed the killing and that Camarines lied about his relationship to the victim Francisco Gealon by saying that the latter was his neighbor when the fact was that, as Jose Bandiola said in his affidavit, the victim was Camarines' cousin-in-law. He makes much of the fact that Camarines reported the killing he allegedly witnessed only after more than two months had elapsed from the time of the incident. Accused-appellant also contends that the wound on Francisco Gealon's head negates Camarines' testimony that Gealon was shot while asleep by accused-appellant, who was standing.

These contentions are without merit. We have gone over the records and we think the testimony of Noli Camarines is credible.

According to accused-appellant, the people who attended the party were all at the back of Bandiola's house, *i.e.*, behind the sala, drinking and that when Bandiola and Camarines ran outside immediately after hearing the shot, there were no other persons around and hence, Camarines could not have seen the victim's assailant. In support of this claim, accused-appellant cites the sworn statement (Exh.4) of Jose Bandiola. The following is what Bandiola said in his sworn statement:

15. Q- :Why where was the place you were drinking?

A-
: Outside beside our kitchen.

16. Q-

: When this Francis Gealon arrived and joined all of you, about how many minutes was Barangay Captain Mariano Verde gone?

A- I cannot remember because I seemed to have blacked out
: from drinking.

17. Q-

: When you returned to the place you were drinking and Barangay Captain Mariano Verde was no longer there, what happened?

A- I returned to my seat and after the lapse of about ten
: minutes I heard a shot outside.

18. Q-

: What did you do when you heard a shot outside?

A- I immediately went out together with Alias Noli and I saw
: driver Francis Gealon seated on his tricycle with plenty of blood on the head. I immediately went to the Municipal Building for the purpose of calling the Patrol but before I could reach the Police Station I saw the Patrol going there. So I just returned to my house and when I arrived there the driver was already brought to the hospital.

19. Q-

: When you ran outside when you heard the shot, did you see any person or persons who were running?

A-
: I did not see any.