

SECOND DIVISION

[G.R. No. 116281, February 08, 1999]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. SPO1
ROMULO GUTIERREZ, JR., ACCUSED-APPELLANT.**

DECISION

MENDOZA, J.:

This is an appeal from the decision,^[1] dated February 15, 1994, of Branch 42 of the Regional Trial Court of Pinamalayan, Oriental Mindoro, the dispositive portion of which reads:

WHEREFORE, premises considered, this Court finds accused SPO1 ROMULO GUTIERREZ, JR. guilty beyond reasonable doubt of the crime of MURDER defined and punished under Article 248 paragraph 5 of the Revised Penal Code as charged with aggravating circumstances of abuse of superior strength, that advantage was taken by the accused of his public position, and that the crime was committed in contempt of or with insult to public authority, one of which is offset by the mitigating circumstance of voluntary surrender, the imposable penalty should have been death, but said penalty was abolished under the 1987 constitution by reason thereof, this Court sentences him to suffer the penalty of RECLUSION PERPETUA, and he is hereby ordered to pay to the heirs of Antonio Mercene, Jr. the following:

- 1) P50,000.00 as indemnity for the death of Antonio Mercene, Jr.;
- 2) P224,000.00 as compensation for the victim's loss of earning as a duly elected Municipal Councilor of Pola, Oriental Mindoro during the May 11, 1992 Local Elections;
- 3) P90,000.00 as reimbursement of the expenses incurred for the wake, burial and funeral services for the deceased Antonio Mercene, Jr.;
- 4) P150,000.00 as support in the form of expenses for education of the two (2) minor children of the deceased;
- 5) P100,000.00 as moral damages for the mental anguish suffered by the heirs of said deceased; and
- 6) to pay the costs.

SPO1 Romulo Gutierrez, Jr., having been convicted of the crime of murder, the property bond posted by bondsmen Constancio Gutierrez, Virgilio Diona, and Feneta Lavalos-Diona for his provisional liberty is

hereby cancelled and released, and authority is hereby given to the Acting Branch Clerk of Court of this Court to detach from the records the certificates of titles, and return them to the bondsmen, duly receipted.

SO ORDERED.

The information^[2] in this case charged $\frac{3}{4}$

That on or about the 17th day of October, 1992 at 2:30 o'clock in the afternoon, more or less, in barangay Batuhan, municipality of Pola, province of Oriental Mindoro, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, a Police Officer, while armed with a revolver and with a decided purpose to kill, did then and there, wilfully, unlawfully and feloniously attack, assault and shoot therewith ANTONIO MERCENE JR. a duly elected municipal councilor, inflicting upon the latter a gunshot wound and multiple abrasions and laceration in different parts of the body which caused his untimely and instantaneous death.

That in the commission of the crime, the qualifying circumstances of treachery and evident premeditation and the aggravating circumstances of abuse of superior strength, that advantage was taken by the accused of his public position, that the crime was committed in contempt of or with insult to public authorities, are attendant.

Accused-appellant at first pleaded "not guilty,"^[3] but later, through a new counsel, withdrew his plea and moved for modification of the order of trial pursuant to Rule 119, §3(e) of the Rules on Criminal Procedure invoking his plea of self-defense. The trial court ruled that accused-appellant was actually entering a conditional plea of guilty and thus entered a plea of not guilty for him. At the same time, it denied accused-appellant's motion for a modification of the order of trial.^[4]

The prosecution's first witness was Dr. Alita H. Fetizanan, Municipal Health Officer of Pola, Oriental Mindoro. She testified that on October 17, 1992 at 6 p.m. she performed an autopsy on Mercene, Jr. She submitted an autopsy report (Exh. A) which contains the following findings:

F I N D I N G S

1. Abrasion, 5 cms. in length, 1 cm. in width, above the right eyebrow, temporal side
2. Abrasion, 1.5 cms. in length, 1 cm. in width, beside the right eyebrow, temporal side
3. Abrasion, 1 cm. in length, 0.5 cm. in width, 1 cm. below the second lesion
4. Linear laceration, 0.9 cm. in length, 0.2 cm. in depth lower right lip
5. Elliptical abrasion, 4 cms. in length, 1.5 cms. in width, region of the left scapula.

6. Gunshot wound, 0.4 cm. in diameter, oval in shape, edges inverted, with blackening around the gunshot wound and contusion collar, 5.5 cms. in diameter, behind the left ear. This wound is the entrance wound, penetrating the left anterolateral neck muscles, transecting the left carotid vessels, with formation of hematoma at the left lateral neck, hitting the apex of the left lung, perforating the ascending aorta and fracturing the 2nd and 3rd rib, about 3.5 cms. from the midsternal region.

7. Hemothorax, with evacuation of about 1.5 liters in the chest cavity.

CONCLUSION:

That the cause of death was due to acute hemorrhagic shock secondary to gunshot wound, transecting the left carotid vessels and perforating the ascending aorta.^[5]

She likewise issued a death certificate (Exh. B)^[6] which states the following:

CAUSE OF DEATH:

- | | |
|---------------------|---------------------------------------|
| I. Immediate cause: | a. Acute Hemorrhagic Shock |
| Antecedent cause: | b. Gunshot wound, left post auricular |

The prosecution's next witness was Arnel Marasigan Aranas, a fellow member of the deceased Antonio Mercene, Jr. in the Sangguniang Bayan of Pola. Aranas knew both Mercene, Jr. and accused-appellant. He testified^[7] that Mercene, Jr. was a member of the Task Force Dagat of the Sangguniang Bayan. According to him, Mercene, Jr. wrote to SPO4 Romeo V. Delmo, accused-appellant's superior, charging accused-appellant with grave misconduct (Exh. C).^[8] Mercene, Jr.'s complaint was based on an incident which happened on August 25, 1992. Aranas said that he and Rosie Rivas accompanied the deceased on an inspection trip along the Casiligan river in Pola because of Rivas' complaint that accused-appellant had been poaching in the area in which she had been granted the exclusive right to catch *lapu-lapu*. Rivas had asked Mercene, Jr. for assistance. Aranas said that they saw accused-appellant with companions at the riverbank, and that Rosie Rivas alighted from the banca they were riding on to talk to accused-appellant. Aranas said he heard accused-appellant telling Rivas, "*Bakit may kasama ka pang Konsehal fry at CAFGU fry*" ("Why do you have to be accompanied by a councilor and CAFGU fry")? Later, according to Aranas, they again met accused-appellant's group in the middle of the river. Accused-appellant shouted invectives at them, "*Putang ina ninyo, mga Konsehal fry at CAFGU fry, masisira ang aming lambat*" ("You s.o.b. Councilor and CAFGU fry. Our fishing nets are going to be destroyed").

Because of that incident, Mercene, Jr. also wrote a letter (Exh. D)^[9] on September 14, 1992 to the People's Law Enforcement Board (PLEB), complaining against accused-appellant for blocking their way with fishing nets and shouting expletives at them. Aranas said accused-appellant was at that time under the influence of liquor.

Continuing, Aranas testified that the deceased also filed a complaint against

accused-appellant with the Philippine National Police (PNP) Provincial Command. PNP Chief Inspector Edwin I. Corvera sent for both accused-appellant and Rosie Rivas, as a result of which they signed an agreement (Exh. F),^[10] dated October 16, 1992, whereby accused-appellant agreed not to catch fish within the area of Rosie Rivas' concession. In exchange, Rosie Rivas agreed not to press charges of illegal fishing against accused-appellant. But a day later, Aranas said, he learned from Rosie Rivas that accused-appellant had killed Mercene, Jr.

The prosecution presented two other witnesses to the shooting: Dante Pajaron, a supplier of gravel and sand, and his helper Jose Advincula.

Jose Advincula was first to testify.^[11] He told the court that in the afternoon of October 17, 1992, at around 2:30 p.m., he went with Dante Pajaron to deliver gravel and sand to a certain Evelyn in Barangay Batuhan, Pola, Oriental Mindoro. While their truck was parked and he was on top of the sand loaded on it, he heard a commotion. Looking to his right, he saw two persons, one had a gun (whom he identified as accused-appellant), while the other (whom he identified as Mercene, Jr.) had none. Advincula said that while Mercene, Jr. was lighting a cigarette, accused-appellant kicked him, causing him to fall to the ground with both hands touching the ground. As Mercene, Jr. tried to stand up, accused-appellant boxed him, causing him to fall again to the ground. Again Mercene, Jr. tried to get up, but accused-appellant hit him on the shoulder, causing Mercene, Jr. to fall with his hands and knees to the ground. Accused-appellant then aimed his gun (about two inches away) towards the back of Mercene, Jr.'s left ear and fired. Mercene, Jr. fell face downwards. In fright, according to Advincula, Dante Pajaron backed out the truck around 12 meters and then they unloaded their cargo of gravel and sand as fast as they could.

Testifying in his turn, Dante Pajaron corroborated the testimony of his helper. He said^[12] that while they were delivering gravel and sand, he saw two persons at his right side, around 7-8 meters away, having an argument. One of them had a gun. He recognized the person with a gun as "Mulong" (accused-appellant's nickname). Fearing for his safety, Pajaron said he got off the truck and sought cover. Less than a minute later, he heard a gunshot. He peeped through his hiding place and saw the person with whom "Mulong" was having an argument drop to the ground. "Mulong" then went inside his house still holding the gun. Pajaron said he and his helpers then unloaded the sand from their truck and then left as quickly as they could.

SPO1 Froilan Rivera of the PNP at Pola was one of the investigators. He and SPO2 Ferdinand Abog and a photographer went to the scene of the crime. He said^[13] that they found the deceased sprawled on the ground ("*nakabulagta*"). They took pictures of Mercene, Jr. (Exhs. H-H-4).^[14] Together with Abog, Rivera made a sketch of the scene of the crime (Exh. J).^[15] Rivera testified that they found no gun or deadly weapon on Mercene, Jr.'s person.

Oscar Coballes is a crime investigator of the Criminal Investigation Service Command (CIS) stationed at Calapan, Oriental Mindoro. He testified^[16] that upon the request of Mercene, Jr.'s widow, he conducted an investigation of the killing. The gun (Exh. O) which accused-appellant had surrendered was given to him. It had four bullets and one empty shell (Exh. P). Coballes prepared a report (Exh. Q)^[17]

which became the basis of the criminal complaint filed in the Office of the Provincial Prosecutor of Calapan, Oriental Mindoro against accused-appellant (Exh. R).^[18]

The widow of the deceased, Alita Patulot Mercene, testified^[19] that they have two children, aged 9 and 5; that her husband was a B.S.E. and B.S.Ed graduate, a former teacher, and, at the time of his death, a municipal councilor receiving P6,000.00/month; that she spent P40,000.00 for the six-day wake for her husband and P50,000.00 for his coffin and funeral services; that for this case she hired the services of the private prosecutor who charged P20,000.00 for his acceptance fee and P2,000.00 for his appearance fee; that her children faced an uncertain future because of the loss of their father; and that after her husband's death, she had trouble sleeping "because it is really difficult to be alone."

Accused-appellant testified in his behalf.^[20] He said that at 2 p.m. on October 17, 1992, he met Mercene, Jr., "who was a little bit drunk," as he was about to leave for work. He claimed that Mercene, Jr. threatened to kill him, saying "*Putang Ina mo Patrolman, papatayin kita ngayon*" ("You s.o.b. Patrolman, I'll kill you now"). Accused-appellant said he raised his hands and begged the deceased for mercy, saying "*Huwag po konsehal, maawa ka sa aking mga anak, at maliliit pa ang mga anak ko*" ("Don't kill me Councilor. Have pity on my children, they are still so young"). He said he then turned to open the door to his house with his left hand, his right hand still raised. However, the deceased threw a box of matches at him and tried to grab his service pistol which was tucked at his waist. Accused-appellant said he held the cylinder of his revolver with his right hand. As accused-appellant and the deceased grappled for possession of the gun, they fell to the ground. According to accused-appellant, the deceased tried to put his finger on the trigger but he was not able to do so because accused-appellant had a finger inside the trigger guard. He claimed that as they were lying, his right hand was holding the barrel of the gun while his left hand was holding the right hand of the deceased. Mercene Jr.'s left hand was allegedly holding accused-appellant's right waist. Accused-appellant said he tried to point the barrel of the gun upwards, even as Mercene, Jr. tried to point it towards accused-appellant. At that point, the gun went off, hitting Mercene, Jr. on the left nape below the ear. According to accused-appellant, at that time, the deceased's finger was on the trigger. Accused-appellant said he then picked up the gun and tucked it at his waist, and stepped out towards the road.

Accused-appellant saw SPO4 Meynard Ramos and asked him to help him bring Mercene, Jr. to the hospital. But Ramos told him to report instead to the police station and he would take care of Mercene, Jr.

Accused-appellant reported the matter to his station commander, SPO3 Rafael Tagulalap, saying that Mercene, Jr. had accidentally shot himself, and surrendered the fatal gun. Accused-appellant claimed that although he was placed inside the jail, it was more to protect him from relatives of the deceased rather than to prevent him from escaping because they believed he committed a crime.

Accused-appellant denied blocking Mercene, Jr.'s passage through the river on August 25, 1992. He claimed he placed the nets to catch fish. Accused-appellant complained that the spot report of the incident transmitted by his station to the PNP Provincial Commander in Calapan was different from the version he gave to his station commander because in the spot report it was stated that he drew his