

## FIRST DIVISION

[ G.R. No. 99869, May 26, 1999 ]

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
ROMEO BELARO, DEFENDANT-APPELLANT.**

### D E C I S I O N

**KAPUNAN, J.:**

Accused Romeo Belaro appeals from the Decision of the Regional Trial Court (RTC) of Naga City<sup>[1]</sup> convicting him of Murder.

Appellant was charged in an information stating:

That on or about 8:00 o'clock [sic] in the evening of November 2, 1989 at Barangay Sibobo, Municipality of Calabanga, Province of Camarines Sur, Philippines and within the jurisdiction of this Honorable Court, the above-named accused with evident premeditation and treachery and while armed with M-16, armalite rifle did then and there wilfully, unlawfully and feloniously shoot with said firearms one Salvador Pastor y Salientes hitting the different parts of his body thereby causing his instantaneous death;

That the commission of this crime was attended with the aggravating circumstance of nighttime to better accomplish the commission of the offense.

ACTS CONTRARY TO LAW.<sup>[2]</sup>

Upon arraignment, appellant pleaded not guilty to the above charge. Trial ensued thereafter.

The prosecution's version is synthesized by the Solicitor General, thus:

The only eyewitness for the offense charged, Myrna Azur Pastor [ `Myrna' ], widow of the deceased Salvador S. Pastor, testified that on 2 November 1989, at approximately 8:10 o'clock [sic] in the evening, she was inside her residence at Sibobo, Calabanga, Camarines Sur, when someone from outside called "Ma" and "Pa", summoning her attention.

Since her husband was already reclined on the bed momentarily savoring a local drama aired on the radio, Myrna raced down the stairs to answer the call.

When Myrna opened the front door, she was surprised to see the caller as their long-time family acquaintance, appellant Romeo Belaro, posing outside the door and armed with the armalite that he usually carries.

Appellant appeared to be drunk. Since the armalite's nozzle was ominously pointed at the door, Myrna felt an onrush of fear and instinctively shut the door. Thereafter, she raced towards their bedroom and told her husband about appellant.

This time, the deceased descended to see appellant while he toted his youngest child.

However, the moment the front door was opened, Myrna was simply surprised when her deceased husband tossed to her the child and shoved her aside.

Thereafter, a volley of shots from an M-16 rifle rang through the air. The deceased was directly hit as he toppled on the floor. Then again, another series of gunfire emitted.

This time, appellant scampered away. Five (5) other unidentified men appeared to have ran away with him. Meanwhile, all that Myrna could do was cry and shout for help.

As Myrna went out of the house to register her shout for help x x x her father, Benedicto Azur, who lived within the vicinity, answered her distress call.

Upon reaching her daughter's house, Benedicto Azur saw deceased bathed in his own blood. Upon inquiry, Myrna could only utter that it was appellant who was responsible for her husband's death. Agitated, Myrna and her four (4) children were transferred to Benedicto Azur's house for solace.<sup>[3]</sup>

The accused's defense consisted of alibi and denial. Appellant, a member of the Civilian Armed Forces Geographical Unit (CAFGU) since June 7, 1989,<sup>[4]</sup> claimed that he was asleep at the CAFGU detachment center at the time of the incident in question. Following is his account of the events on that fateful day:

Appellant was at the detachment center at around 9:00 in the morning of November 2, 1989.<sup>[5]</sup> A little after nine, appellant asked permission from their Assistant Detachment Commander, Sgt. Esmeraldo Ravara, if he could buy medicine for his sick child.<sup>[6]</sup> Appellant thereafter left for Barangay Sibobo, wearing a T-shirt, maong pants and slippers.<sup>[7]</sup> Appellant carried with him his armalite, which had a crack at the right side and a hole on the left, but did not have a sling.<sup>[8]</sup>

Appellant arrived in Barangay Sibobo at around 10:00 that same morning.<sup>[9]</sup> He then went to his aunt to buy fish and saw his cousins who invited him to "a drinking spree."<sup>[10]</sup> Appellant accepted their invitation and drank with them until 3:00 in the afternoon.<sup>[11]</sup> He went home thereafter.<sup>[12]</sup>

Upon arriving at his house in Cabanbanan, Calabanga, Camarines Sur, appellant took his lunch and then went to laid down to rest.<sup>[13]</sup> Appellant got up at around 5:30 in the afternoon and informed his wife that he was going to report back to the

detachment center,<sup>[14]</sup> which was approximately 100 meters from their house.<sup>[15]</sup>

Back at the barracks, appellant cooked noodles for snacks.<sup>[16]</sup> His Assistant Detachment Commander, Sgt. Ravara, then invited appellant and the other men for a drink.<sup>[17]</sup> Cafgu Garison, Rogelio Salientes, Renato Quieros, Roberto dela Cruz, appellant and Aproniano Mallo, the Barangay Captain of Cabanbanan, Calabanga, Camarines Sur, obliged.<sup>[18]</sup> Appellant had three shots of gin. Feeling the effects of the alcohol, appellant took leave from Sgt. Ravara to retire for the night.<sup>[19]</sup> Appellant then laid down on his bed about four (4) meters away from where the drinking was taking place, and slept.<sup>[20]</sup> He woke up at around seven o'clock the next morning<sup>[21]</sup> only to learn from Sgt. Ravara that Salvador Pastor was shot dead the night before.<sup>[22]</sup> The Sergeant warned him not to go to Sibobo as he was the suspect in the killing.<sup>[23]</sup> Appellant replied that "if that [was] the case, [he] will not go there anymore because the relative[s] [of] Salvador Pastor might harm [him]." <sup>[24]</sup> Later, appellant did go to the Calabanga police station accompanied by his detachment commander.<sup>[25]</sup>

Appellant's alibi was corroborated by Rogelio Salientes<sup>[26]</sup> and Eustaquio Aquino,<sup>[27]</sup> both CAFGU members, Aproniano Mallo,<sup>[28]</sup> the Barangay Captain of Cabanbanan, Calabanga, Camarines Sur, and Sgt. Ravara.<sup>[29]</sup>

Appellant further alleged that although his rifle had a crack and a hole in it,<sup>[30]</sup> the same did not have any sling or epoxy since the time of its issuance to him in June 1989.<sup>[31]</sup> Hence, prosecution witness Myrna Pastor could not have seen the sling and the epoxy in the armalite rifle on or before November 2, 1989. He also claimed that Myrna could not have seen him in uniform and barefoot at the same time since their regulations required them to wear combat or rubber shoes when in uniform.<sup>[32]</sup> He denied that he was not envious of the victim's good fortune as he had a better means of livelihood.<sup>[33]</sup>

The defense likewise attempted to pin the victim's death on the New People's Army (NPA). According to Sgt. Ernesto Austero, the deceased was an "asset" who reported the activities of the NPA to him.<sup>[34]</sup> Sgt. Austero testified that in a patrol conducted in May 1990, the military discovered a ballot box containing supposedly subversive documents including a list of persons wanted by the NPA.<sup>[35]</sup> Among the names allegedly in said list<sup>[36]</sup> was that of the deceased Salvador Pastor who was described therein as "DID, informer, holdupper."<sup>[37]</sup>

In a "Judgment" dated December 14, 1990, the RTC found appellant guilty beyond reasonable doubt as follows:

WHEREFORE, premises considered, judgment is hereby rendered declaring that accused ROMEO BELARO is guilty beyond reasonable doubt of the crime of Murder as defined and penalized under Article 248 of the Revised Penal Code without any aggravating or mitigating circumstance and, he is hereby sentenced to reclusion perpetua, to indemnify the heirs of Salvador Pastor y Salientes represented by Myrna Azur-Pastor, the sum of P50,000.00 as damages as well as to reimburse Benedicto Azur

for the funeral expenses incurred in the burial of the deceased in the sum of P8,421.00 without subsidiary imprisonment in case of insolvency; and, to pay the costs of this suit.

Accused is entitled to full credit for the entire period of his detention from February 5, 1990.

SO ORDERED.<sup>[38]</sup>

Appellant now questions his conviction, contending that:

1. The accused was denied the right to trial by an impartial and neutral judge;
2. The trial court erred when it did not give credence to the testimonies of the witnesses for the accused;
3. The trial court erred when it convicted, rather than, acquitted the accused.
4. Assuming the accused is guilty, the trial court erred when it concluded that the crime committed was murder qualified with treachery, and not plain and simple homicide.
5. Assuming further that the accused is guilty of homicide or murder, the trial court erred in not considering in his favor the mitigating circumstances of drunkenness and illiteracy; and
6. Assuming the accused is guilty, the trial court erred in imposing the penalty of reclusion perpetua.<sup>[39]</sup>

Appellant submits that the trial court had prejudged his witnesses' credibility even before the trial started. This prejudgment supposedly manifested itself in the following portion of the court's decision:

Neither can the Court give credence to the claim of the accused that at the time the victim was shot he was sleeping in their detachment barracks after having drank gin upon the alleged invitation of the Assistant Detachment Commander, Sgt. Esmeraldo Ravara (TSN August 29, 1990, pp. 24-26) notwithstanding the corroborative testimonies of CAFGU member Rogelio Salientes (TSN August 17, 1990, pp. 24-29); Barangay Captain Aproniano Mallo of Cabanbanan, Calabanga, Camarines Sur (TSN Augu 17, 1990, pp. 6-9); CAFGU Eustaquio Aquino (August 17, 1990, pp. 36-41) and Sergeant Esmeraldo Ravara, (TSN, August 16, 1990, pp. 36-41) as said witnesses, except Barangay Captain Aproniano Mallo, are either members of the military, or at least affiliated with it as CAFGU members, who cannot be free of bias influenced as they are by the spirit of comradeship existing among them. The bias of said defense witnesses was apparent to the Court when almost all of them were present during the trial of this case even at the time when the prosecution was still presenting evidence and there was no need for them to be in court. Even the 7th CAA Co'y Commander, a 2nd Lt. Arnel B. Escobal made representations with the Court praying for the transfer of

the accused from the custody of the Provincial Warden at Tinangis Penal Farm, Tinangis, Pili, Camarines Sur to the detention cell at the 7th CAA Camarines Sur Constabulary/Integrated National Police Command at Concepcion Grande, Naga City (Ex Parte Motion to Transfer Custody of the Detention Prisoner dated March 8, 1990, page 24, record) which however was denied by the Court in view of the escape of a CAFGU member who also sought and was granted transfer of detention from Tinangis Penal Farm to the PC Headquarters, Concepcion Grande, Naga City and the Provincial Command has not accounted for his whereabouts even up to now (Order of the Court dated March 13, 1990, page 25, record).<sup>[40]</sup>

Appellant argues that the trial judge's prejudice calls for a remand to the trial court for re-trial.

We discern no prejudice on the part of the trial judge. A judge enjoys the presumption of regularity in the performance of his functions.<sup>[41]</sup> Accordingly, we construe the above statements of the trial judge not as manifestations of bias but as mere observations that the judge later took into account in the rendition of judgment. The statements do not necessarily mean that the judge had prejudged the accused, only that he factored his earlier observations when he prepared the decision of conviction. Indeed, judges should be observant in the goings-on in the courtroom, taking note of every relevant detail that may prove to be of weight when the judges prepare their decision. The judge's observations should form part of his decision. Such practice should be commended rather than condemned for it achieves two purposes. The first is compliance with due process for it informs the parties of the bases of the court's decision. Thus, the Constitution<sup>[42]</sup> requires that "[n]o decision shall be rendered by any court without expressing therein clearly and distinctly the facts and the law on which it is based." Second, in case of conviction and appeal, the reviewing court or courts would know and appreciate how the trial judge arrived at his conclusions.

Moreover, the attendance of the witnesses and the motions for the transfer of the accused are not *per se* indicative of bias. This was not lost on the trial judge who made the statements merely to support his conclusion that most of the defense witnesses, who were themselves CAFGU members, "cannot be free from bias" in view of the camaraderie between them and the accused. Later in the text of the decision, the judge also noted the demeanor of these witnesses during their examination and found their deportment to be inconsistent with that of a truthful witness. The decision of the court should be read as a whole and the above-quoted statements should be read in the light of the other parts of the decision.

In any event, the testimonies of these witnesses corroborating appellant's alibi cannot outweigh positive identification by the victim's widow of appellant as her husband's assailant.<sup>[43]</sup>

This brings us to appellant's second and third assigned errors. Appellant contends that the trial court should have given credence to the testimonies of the defense witnesses corroborating appellant's alibi, especially that of Rogelio Salientes and Barangay Captain Aproniano Mallo, who are both related to the victim. Salientes is allegedly a cousin of Salvador Pastor while Mallo is the husband of another cousin of