

FIRST DIVISION

[G.R. Nos. 116196-97, June 23, 1999]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. PABLO ADOVISO, DEFENDANT-APPELLANT.

D E C I S I O N

KAPUNAN, J.:

Pablo Adoviso appeals from the Joint Judgment^[1] of the Regional Trial Court of Camarines Sur^[2] declaring him guilty beyond reasonable doubt for two counts of Murder.

Appellant, allegedly a member of the Citizens Armed Forces Geographical Unit (CAFGU), was originally charged with four unidentified persons who have, however, remained at large. The information^[3] charging appellant with the Murder of Rufino Agunos under Criminal Case No. P-2079 alleges:

That on or about the 18th day of February 1990 at about 8:00 o'clock [*sic*] in the evening at Sitio Tan-agan, Barangay Casugad, Municipality of Bula, Province of Camarines Sur, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, while armed with assorted long firearms, conspiring, confederating and mutually helping one another, with intent to kill and with treachery and evident premeditation, did then and there willfully, unlawfully and feloniously shoot one Rufino Agunos several times with said firearms hitting the latter on the different parts of his body which were the direct and immediate cause of his death, to the damage and prejudice of the heirs of said Rufino Agunos.

That the crime complained of against the accused is not service connected.

ACTS CONTRARY TO LAW.

Except for the name of the victim, the information in Criminal Case No. P-2080 with respect to the killing of Emeterio Vasquez, contains the same allegations.^[4]

Appellant pleaded not guilty to both charges. At the joint trial of Criminal Case Nos. P-2079 and P-2080, the prosecution presented their version of the events that transpired on the evening of February 18, 1990, as follows:

The spouses Emeterio and Anastacia Vasquez had two adjacent houses in Sitio Tan-agan, Barangay Casugad, Bula, Camarines Sur. One of the houses was actually a *camalig* where they stored harvested rice. The spouses preferred to live there because it was cooler. The living area of the *camalig* had walls of bamboo called

salsag. This area was elevated from the ground. Three steps led down to an awning (*suyab*) walled with bamboo slats. These slats were placed horizontally approximately four to six inches apart. A portion of the awning was used as a kitchen but another portion had a *papag* where the Vasquez' grandson, Rufino Agunos, son of their daughter Virginia, would sleep whenever he tended the irrigation pump. The spouses' son Bonifacio occupied the other house eight (8) meters from the *camalig* with his own son Elmer.

At around 8:00 in the evening of February 18, 1990, Emeterio Vazquez was preparing coffee as his wife was about to retire for the night. Their grandson Rufino had already gone to sleep in the *papag*. Anastacia had just finished spreading the sleeping mat when she heard three or four gunshots. Emeterio then uttered that he had been shot. Seeing Emeterio, Anastacia exclaimed, "Why should you not be hit when in fact there are guns in front of you." Anastacia saw the "protruding edge of the gun" on the wall near the stairs where Emeterio went down. A lamp near the stairs where Emeterio drank coffee illuminated the *camalig* but Anastacia failed to recognize the persons who fired their guns at her husband.

The Vasquez' son Bonifacio was in the bigger house when he heard the gunshots. Earlier that evening, Bonifacio was talking to Rufino regarding the engine of the irrigation pump. Bonifacio was still talking when he noticed that Rufino had fallen asleep, the latter's back against the bamboo wall. Bonifacio left Rufino snoring in the *papag* and went to the other house. Only a minute had passed after he had gone up when Bonifacio heard the gunshots. He and his 16-year-old son Elmer immediately went down the front yard to investigate.

Bonifacio hid himself in the dark portion of the yard, behind a coconut tree. From a distance of eight (8) meters, Bonifacio saw Rufino, who was inside the *camalig*, being shot by several persons from the outside. Looking through the bamboo slats of the *camalig* wall, Bonifacio recognized one of the assailants, with a large built and long hair, as appellant Pablo Adiviso because of the gas lamp that was lighted inside the *camalig*. Of Rufino's assailants, only appellant was not wearing a mask. Appellant was holding a long firearm wrapped inside a sack with its muzzle protruding and directed where Rufino was sleeping. Appellant then fired hitting Rufino. At that moment, Bonifacio heard his father Emeterio shout "Pino," (referring to his grandson Rufino) and saw his father go down the stairs carrying a gas lamp. Appellant fired again, hitting Emeterio at the stomach.

For his part, Elmer, who rushed towards the *camalig* with his father Bonifacio, saw five (5) persons aiming their firearms at the *camalig*. Except for appellant, each of these persons had a cover over their faces. Three (3) of them were positioned in a ditch near the *camalig* while two (2) others were near its door. Elmer saw these five (5) persons shoot his cousin Rufino who was lying down on the *papag*. Although his back was hit, Rufino was able to crawl under the *papag*. Elmer's grandfather was also hit on the stomach but he managed to go up the *camalig*. When appellant and his companion by the *camalig* door saw Elmer, they fired at him then, with the three others at the ditch, escaped to the banana plantation. Elmer, on the other hand, fled towards the coconut plantation.

Upon returning to the *camalig*, Elmer saw his father carrying his grandfather Emeterio. He also found Rufino at the foot of a coconut tree near the river, lying on his side with his body curled. Rufino told Elmer that he had been hit and, when

Elmer failed to locate his wound, Rufino took Elmer's hand and put it on his back. Elmer then moved Rufino "sidewise." Upon returning to the *camalig*, Elmer carried his grandfather and bandaged his stomach with diapers.

In the meantime, Bonifacio went to the municipal building of Bula to fetch the police. Inspector Antonio Lopez and Senior Police Officer 1 Claro Ballevar returned to the scene of the crime with him. The police brought Emeterio and Rufino to the municipal hall of Bula and then to the Bicol Regional Hospital. Both Emeterio and Rufino died early the next morning.

The certification^[5] dated March 7, 1990 and signed by Dr. Janice Nanette Estrada, resident physician of the Bicol Regional Hospital in Naga City, states that 35-year-old Rufino Agunos died of four (4) gunshot wounds: at the inguinal area, the sacral area, the thigh and the abdomen. The wounds at the inguinal area and the thigh bore contusion collars. The same physician certified that Emeterio Vasquez, 88 years of age, sustained seven (7) gunshot wounds at the paraumbilical area, lumbar area, hypogastrum, anterior aspect of the right forearm, anteromedial aspect of the right forearm, anteromedial aspect left arm and anterolateral aspect of the left arm. Four (4) of these gunshot wounds had contusion collars - at the paraumbilical area, the hypogastrum, the right forearm and the left arm.^[6]

Appellant Adoviso interposed alibi and denial as his defense.

Appellant claimed that he was a member of the CAFGU whose headquarters was located in Barangay Palsong, Bula, Camarines Sur. At around 7:00 in the evening of February 18, 1990, he was in Sitio Burabod, Palsong, about a kilometer away from the CAFGU headquarters. He, together with Francisco Bislombre, Benjamin Alina, Jr. and PFC Antero Esteron, had some drinks in the store of Honoria Tragante until around 11:00 p.m.

Honoria Tragante and Francisco Bislombre corroborated appellant's alibi. Antero Esteron likewise testified that from 7:00 until past 11:00 that night of February 18, 1990, he and appellant had a drinking spree at the Tragante store. He distinctly remembered that date because it was the fiesta of Balatan.

To support his denial, appellant presented Lt. Antonio Lopez, the deputy chief of police and SPO2 Claro Ballebar of the PNP Bula Police Station. Lopez identified a police certification^[7] prepared by Pfc. Ramon N. Canabe to the effect that the shooting incident was perpetrated "by unidentified armed men." Lopez said that he (Lopez) was one of those who brought the victims to the hospital who were then still conscious. The victims told him that they did not know who shot them or why they were shot.

SPO2 Claro Ballebar, however testified that in the follow-up investigation he conducted several days after the incident, Bonifacio Vasquez revealed to him that he (Bonifacio) "vividly saw the incident and recognized" appellant as one of the perpetrators of the crime and that the killings had some something to do with land dispute between Bonifacio's parents and the Galicia family.

The defense also offered in evidence the testimony of Ernesto A. Lucena, Polygraph Examiner II of the National Bureau of Investigation (NBI) in Manila, who conducted

a polygraph test on appellant. In Polygraph Report No. 900175,^[8] Lucena opined that appellant's "polygrams revealed that there were no specific reactions indicative of deception to pertinent questions relevant" to the investigation of the crimes.

In rebuttal, Bonifacio Vasquez revealed that when he reported the incident to the police, he did not identify appellant as one of the culprits because he was afraid of appellant who was a member of the CAFGU. Nevertheless, Bonifacio did mention to the police that he recognized appellant as one of the perpetrators of the crime although he told them that he did not recognize appellant's four (4) companions. He did not mention to Lopez and Canabe appellant's identity because he was "confused" about what had happened in their house.

On March 25, 1994, the trial court rendered a Joint Judgment finding appellant guilty beyond reasonable doubt for two (2) counts of murder and disposing of Criminal Case Nos. P-2079 and P-2080 as follows:

WHEREFORE, in view of all the foregoing, joint judgment is hereby rendered:

In Criminal Case No. P-2079, finding the accused PABLO ADOVISO guilty beyond reasonable doubt of the crime of MURDER and imposing upon him the penalty of *RECLUSION PERPETUA* and to pay the legal heirs of Rufino Agunos, consisting of the widow, Evelyn T. Agunos and their four (4) children the sum of FIFTY THOUSAND PESOS (P50,000.00) Philippine Currency;

In Criminal Case No. P-2080, likewise finding said accused PABLO ADOVISO guilty beyond reasonable doubt of the crime of MURDER and imposing upon him another penalty of *RECLUSION PERPETUA* and to pay the legal heirs of the late EMETERIO VASQUEZ, consisting of Anastacia Vasquez and Bonifacio Vasquez, another sum of FIFTY THOUSAND PESOS (P50,000.00) Philippine Currency with all the accessory penalties provided therefore in both cases and to pay the costs in both instances.

SO ORDERED.^[9]

Appellant hinges his bid for exoneration on whether he was properly identified by the two (2) eyewitnesses as one of the killers of the victims. He contends that eyewitnesses Bonifacio and Elmer Vasquez presented an "incredible" story because it is "highly improbable" that they could have "distinctly and positively recognized accused-appellant as one of the perpetrators of the crimes."^[10] According to appellant, Bonifacio, who was in the dark portion of the yard hiding behind a coconut tree, could not have identified appellant by the light emanating from gas lamp inside the *camalig* where Emeterio Vasquez and Rufino Agunos were staying at the time of the incident. Neither could Elmer Vasquez, who declared that he saw his grandfather shot by appellant, could have identified appellant because of the poor lighting coming from the gas lamp being carried by his grandfather. Appellant claims that the gas lamp carried by Elmer's grandfather was "a small can about two (2) inches tall and the wick is smaller than a cigarette" and the lamp inside the *camalig* "was placed inside a bigger can so that the direction of the light emanating therefrom was upwards and not sidewise."^[11]