

## FIRST DIVISION

[ G.R. No. 117685, June 21, 1999 ]

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
ALFONSO R. BAUTISTA @ "POLDO," ACCUSED-APPELLANT.**

### DECISION

**KAPUNAN, J.:**

Before us is an appeal from the Decision of May 26, 1994 of the Regional Trial Court of Dagupan City, Branch 44 in Criminal Case No. D-12278 convicting appellant Alfonso R. Bautista of the crime of murder as follows:

WHEREFORE, the Court finds Alfonso Bautista alias Poldo Bautista guilty beyond reasonable doubt as principal of the crime of Murder under Article 248 of the Revised Penal Code and, pursuant to law, hereby sentences him to suffer the penalty of Reclusion Perpetua. Accused is ordered to indemnify the heirs of the deceased in the amount of P50,000.00.

Accused is ordered to pay Letecia (sic) Bandarlippe the amount of P35,000.00 representing the money spent during the wake of Cipriano Bandarlippe.

SO ORDERED.<sup>[1]</sup>

Appellant was originally charged with murder along with Samuel Ventura and Alejandro Defuntorum<sup>[2]</sup> before the Municipal Circuit Trial Court of San Fabian, Pangasinan.<sup>[3]</sup> Upon reinvestigation by the provincial prosecutor, however, the charge against Ventura and Defuntorum was dismissed for lack of sufficient evidence.<sup>[4]</sup> In due course, on November 15, 1993, the following information was filed against appellant:

That on or about November 30, 1992 in the evening at barangay Anonang, municipality of San Fabian, province of Pangasinan, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, armed with a long firearm with intent to kill, treachery and evident premeditation, did, then and there wilfully and unlawfully and feloniously shoot CIPRIANO BANDARLIPE y SION inflicting upon him a gunshot wound (omental evisceration right upper abdomen) which caused his death, to the damage and prejudice of his heirs.

CONTRARY to Art. 248, Revised Penal Code.<sup>[5]</sup>

Upon arraignment, appellant entered a plea of not guilty. At the trial of the case, the prosecution adduced the following evidence:

At around 7 o'clock in the evening of November 30, 1992, Leticia Bandarlipe<sup>[6]</sup> was seated on a sled near a *kamias* tree by her house in Anonang, San Fabian, Pangasinan to await the arrival of her husband, Cipriano Bandarlipe. An hour and a half later, she heard a gun report and the ensuing shout of her husband that he was shot. Leticia ran to her husband's succor and found him prostrate on the road about fifteen (15) meters away from where she was seated. As she embraced her husband and cried for help, she saw appellant standing at a distance of two (2) meters from Cipriano, pointing a long firearm at the latter. Leticia recognized appellant whom she identified in court as "Leopoldo Bautista," as she had seen him several times before. Moreover, it was a moonlit night and the place was illuminated by the lights originating from the house of her in-laws and a passing payloader. Leticia asked her husband who shot him and Cipriano replied that appellant did. When Leticia looked up, appellant was no longer there. Thereupon, together with her sister-in-law, Barangay Captain Felipe M. Solis, Jose C. Gagaza, Jr., Barangay Tanod De Leon and others, Leticia rushed Cipriano to the provincial hospital in Binloc, Dagupan City. There, Cipriano expired.<sup>[7]</sup>

Leticia's neighbor, Rogelio Peralta, was walking on his way home when, by the light of a passing payloader, he saw appellant carrying a long firearm immediately after he had heard gunfire. Rogelio went to the side of the road and, after appellant had vanished, continued on his way home. He later learned that Cipriano was shot and rushed to the hospital.<sup>[8]</sup>

Dr. Alberto Gonzales, the resident physician who attended to the victim, issued a medico-legal certificate stating that the 37-year-old Cipriano Bandarlipe had alcoholic breath and omental evisceration at the right upper abdomen. Cipriano died of cardio-respiratory arrest secondary to hypovolemic shock due to gunshot wound on the abdomen.<sup>[9]</sup>

According to Leonardo Tabilen, Chief of the Intelligence Unit of the 152nd PC Company, he had known appellant as a "dreaded killer in San Fabian and San Jacinto, Pangasinan" who was suspected of having killed Federico Dispo, Efren Reyes and the Barangay Captain of Pozorrubio, aside from Cipriano Bandarlipe. Based on information gathered from barangay people, Tabilen conducted a surveillance operation upon appellant. At the invitation of Barangay Captain Solis, who was his partner in keeping peace and order in the community, Tabilen went to the house of Prudencio Feriamil on October 5, 1992 (sic). There, he invited appellant and his brother-in-law, Rufino Reyes, to the headquarters to shed light on the killing of Cipriano Bandarlipe. Appellant willingly went with him and the investigation conducted at the headquarters resulted at a finding that appellant was the killer of Cipriano. The witnesses who were investigated and who pointed to appellant as the culprit were Rogelio Peralta, Cipriano's wife, Prudencio Feriamil, the Chief Barangay Tanod and the Barangay Captain.<sup>[10]</sup>

In his defense, appellant claimed that he was framed up and that it was actually Feriamil who killed Cipriano. A handicraft worker from Lipit, Manaoag, Pangasinan, appellant, who was also known as "Poldo," was introduced to Prudencio Feriamil by his brother-in-law at a gathering in Macayog, San Jacinto, Pangasinan. Feriamil convinced appellant to work as his industrial partner in the tobacco plantation the former operated in Anonang, San Fabian, Pangasinan. Leaving his family behind, appellant accepted the offer and began work in January 1992. He stayed with

Feriamil in a hut about a hundred meters away from the tobacco plantation. He met Leticia Bandarlipe for the first time when the latter arrived with Feriamil who introduced her as his *kumadre*. Leticia had, since then, become a frequent visitor of Feriamil in the hut.<sup>[11]</sup>

Appellant recalled that he last saw Leticia in an uncompromising situation with Feriamil sometime in April 1992. The two were lying naked on a bamboo bed inside the hut with Leticia on top of Feriamil. Perplexed by what he saw, appellant hurriedly went out of the hut. The illicit lovers emerged a little later and begged appellant not to disclose to anybody what he had witnessed. Appellant told them not to worry. The two did not go home immediately for fear that they would get sick (*pasma*) but apparently in her haste to leave, Leticia left in a corner of the hut a pink panty with the name "Letty Bandarlipe" embroidered on it. Appellant kept the panty in a plastic bag intending to return the same to its owner. However, since Leticia never visited the house again, appellant could not return the panty to her. Appellant produced the panty in court as Exhibit 4 and 4-A.<sup>[12]</sup>

After the harvest season in May 1992, appellant went home to visit his family in Manaoag. During his absence, Feriamil and Leticia sold tobacco for Thirty-Five Thousand Pesos (P35,000.00) but they refused to give appellant his share in the proceeds. Appellant made several attempts to collect his share but Feriamil merely advised him to keep his patience while he searched for money as Leticia had taken the proceeds of the sale.<sup>[13]</sup>

While appellant was in his hometown, Cipriano Bandarlipe was killed. The persons who rushed him to the hospital, namely, Barangay Captain Felipe Solis, Jose Gagaza, Jr. and Barangay Security Force Chief Zaldy Aquino, proceeded to the PNP Headquarters in San Fabian, Pangasinan to report the incident.<sup>[14]</sup> Solis believed that Feriamil (Periamil) could have authored the crime per the information given him by Gagaza because Feriamil was often in the company of "Leopoldo Bautista."<sup>[15]</sup> The report of Solis was written on the police blotter as Entry No. 187.<sup>[16]</sup> In fact, Solis brought Feriamil to the police station on December 1, 1992 and even the NBI<sup>[17]</sup> in Dagupan City but Feriamil's investigation yielded a negative result so that Feriamil was able to go home with Solis.<sup>[18]</sup>

On the other hand, Gagaza's report to the police was entered in the blotter as follows:

This has ref to entry Nr. 187, in this Police Blotter dtd 30 Nov. 92, Jose Gagasa y Castro, 25 years old, single, a resident of brgy. Anonang this mply appeared to this station and informed that when he accompanied the victim (Cipriano Bandarlipe) at the hospital. He the (victim) stated that he was shot by one Domy Ferreamil also of same place, and in the presence of Brgy. Capt. Felipe Solis and chief Brgy. Force Saldy Aquino of brgy. Anonang this town, when he stated same words against the suspect.

Jose C. Gagaza, Jr.<sup>[19]</sup>

Exhibit "3-a," a document dated September 11, 1998 that was issued by Chief Inspector Fausto M. Cayabyab, Jr., shows that SPO2 Ricardo D. Abrio, police desk

officer, confirmed that Gagaza, Jr. had affixed his signature on the same police blotter.<sup>[20]</sup>

Sometime in August 1993, appellant returned to Anonang to collect his share of the proceeds of the sale of tobacco from Feriamil. The latter requested him to come back after one month. In his frustration, appellant threatened to reveal the amorous relationship between Leticia and Feriamil.<sup>[21]</sup> In the evening of September 3, 1993, Zaldy Aquino invited Solis and Feriamil to his residence. Solis and Aquino asked Feriamil if he had anything to do with the killing of Cipriano Bandarlipe or if he knew anything about it. Feriamil replied that "Poldo Bautista" killed Cipriano and that "Poldo Bautista" was supposed to go to his residence on September 5, 1993.<sup>[22]</sup>

Appellant, his sister and brother-in-law indeed returned to Feriamil's house on that date. Feriamil asked them to wait while he prepared some snacks. While appellant's group was drinking coffee, several people including Solis, Sgts. Tabilen and De Guzman, Rogelio Peralta and Jose Gagasa, Jr. entered the house. They pointed a gun at appellant and his companions, telling them not to move. They told appellant's group that if they valued their lives, they should go down the house. As they were descending from the house, someone asked Feriamil, "Who among these?" Feriamil pointed to appellant and immediately someone struck him with the butt of a gun. With his hands tied at the back, appellant was brought to the 152nd PC Command in Lingayen, Pangasinan where he was mauled to force him to admit the killing of Cipriano with whom he was not even acquainted.<sup>[23]</sup>

Based on the statements executed on September 5, 1993 by Jose Gagaza, Jr.,<sup>[24]</sup> Prudencio Feriamil,<sup>[25]</sup> Leticia Bandarlipe,<sup>[26]</sup> Rogelio Peralta<sup>[27]</sup> and Felipe Solis,<sup>[28]</sup> an information for murder was filed against appellant. In his sworn statement, Jose Gagaza, Jr., a Barangay Tanod declared, among others, that at the time of the incident, he heard a gun explosion; that immediately after he heard Cipriano asking for help as he was shot; that when he came near the victim, the latter while being cradled by his wife Leticia, declared that it was "Poldo Bautista" who shot him; and that while on the way to the hospital where he was brought by a group, including Gagaza Jr., the victim repeatedly identified "Poldo Bautista" as the one who shot him.

Feriamil, for his part, stated that when appellant came home disturbed and with a gun that fateful night of November 30, he confessed to having killed Cipriano. He and appellant then slept. In the morning of November 31, 1992 (sic), Barangay Captain Solis and some policemen arrived and brought him (Feriamil) to the police station where he was asked about the killing of Cipriano. Feriamil told the police that he did not know anything about the matter but he did not relate to them what appellant had confessed to him the night before because he was afraid.

The sworn statements of Leticia Bandarlipe, Rogelio Peralta and Felipe Solis were all reiterated in their respective testimonies.

As stated at the outset, the trial court convicted appellant of the crime of murder and condemned him to suffer the penalty of *reclusion perpetua*. It gave weight and credence to the circumstantial evidence that appellant was seen holding a gun near the fallen victim soon after witnesses Leticia Bandarlipe and Rogelio Peralta had heard the gun report. Thus, the trial court ratiocinated:

The reason given by Alfonso Bautista that he was framed up in this case in order that he could not reveal what he had observed between Prudencio Feriamil and Leticia Bandarlipe is devoid of merit. The prosecution, thru the testimony of Rogelio Peralta, clearly established that Rogelio Peralta had seen Alfonso Bautista holding a gun on November 30, 1992 at around 8:30 in the evening while on the road walking near the house of Cipriano Bandarlipe at Anonang, San Fabian, Pangasinan, at which place he heard a burst of a gun. He met accused Alfonso Bautista and the latter was carrying a firearm. This witness could not have committed a mistake because there was a light of the payloader which was focused to the accused. The testimony of Rogelio Peralta was supported by the testimony of Leticia Bandarlipe who declared that she had seen Alfonso Bautista holding a gun and the gun was still pointed to the deceased while he was sprawled on the ground. In fact, this prosecution witness clearly stated that the accused immediately ran away when she had seen him.

There is no question that the witness had seen the accused. In fact she (Leticia Bandarlipe) testified that she saw Alfonso Bautista standing near her husband about two meters away. The place where the incident took place was lighted by a payloader, aside from the light coming from the house of her in-laws.

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Furthermore, when he was invited to the headquarters at Lingayen, Pangasinan, the accused went with Leonardo Tabilin, Chief of the Intelligence of the PNP Command willingly. During the investigation, it was found out that Alfonso Bautista was the one who killed Cipriano Bandarlipe.<sup>[29]</sup>

Aggrieved by the above decision, appellant interposed the instant appeal, assigning the following as errors of the court a quo:

I

THAT THE TRIAL COURT ERRED IN FAILING TO CONSIDER AND TAKE INTO ACCOUNT THE DYING DECLARATION MADE BY THE DECEASED VICTIM.

II

THAT THE TRIAL COURT ERRED IN FAILING TO CONSIDER AND TAKE INTO ACCOUNT THAT FAILURE OF WITNESSES TO POINT THE ACCUSED IMMEDIATELY AFTER THE SHOOTING INCIDENT WEAKENS THEIR CREDIBILITY.

III

THAT THE TRIAL COURT ERRED IN FAILING TO CONSIDER AND TAKE INTO ACCOUNT THE SUPPRESSION OF EVIDENCES (sic) BY THE