

## **FIRST DIVISION**

**[ G.R. No. 126143, June 10, 1999 ]**

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
ALFONSO BADON, ARNOLD ARELLANO AND NILO CAFINO,  
ACCUSED. ALFONSO BADON AND ARNOLD ARELLANO, ACCUSED  
APPELLANTS.**

### **D E C I S I O N**

**MELO, J.:**

In an Information dated August 11, 1983, Alfonso Badon, Arnold Arellano, and Nilo Cafino, were charged with the crime of murder, thusly:

That on or about 8:00 o'clock in the evening of June 17, 1983 at Barangay Cabangahan, in the municipality of Siaton, province of Negros Oriental, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating with one another, with superior strength, and armed with deadly weapons with which all the accused were armed at that time, with treachery and with intent to kill, did then and there wilfully, unlawfully and feloniously attack, assault, stab, hack and shot the victim, EDWIN GOMEZ inflicting upon the victim the following injuries, to wit:

1. Hacking wound, 5 inches in length, fronto-parietal area;
2. Hacking wound, 2 ½ inches in length, neck, lateral, right;
3. Hacking wound, 4 inches in length, neck, right cutting the esophagus, both carotid vein and artery, trachea and cervical vertebra;
4. Hacking wound, 3 inches, neck, right;
5. Hacking wound, 2 ½ inches in length, distal third, arm, right lateral;
6. Hacking wound, 2 ½ inches in length, proximal third, forearm right;
7. Hacking wound, 1 1/3 inches in length, distal third, forearm;
8. Hacking wound, 3 inches in length, occipital area, right;
9. Hacking wound, ¾ inch, distal third, arm, left;
10. Hacking wound, 1 inch, forefinger;

11. Bullet wound, right scapular area;
12. Bullet wound, about 2 inches above the level of public bone, right;
13. Slough-off wound, 3" x 4", right shoulder;
14. Stab wound, 1  $\frac{1}{4}$  x 1  $\frac{1}{2}$  non-penetrating, right upper quadrant of the chest;
15. Hacking wound, 6 inches in length, cutting the 6<sup>th</sup> to the last ribs, right chest;
16. Bullet wound, about 3 inches below the left clavicle;
17. Stab wound, 1  $\frac{3}{4}$  inches x  $\frac{1}{2}$  inch, non-penetrating, 3 inches above the umbilicus;
18. Stab wound, 2 inches x 8 inches, epigastric area, penetrating;
19. Stab wound,  $\frac{3}{4}$  x  $\frac{3}{4}$  inches, non-penetrating, right lower quadrant, abdomen;
20. Stab wound,  $\frac{3}{4}$  x 3 inches, non-penetrating, chest, lateral;

which injuries caused the immediate death of the victim EDWIN GOMEZ.

(pp. 37-38, Rollo.)

In an order dated June 20, 1985, the trial court directed the separate trial of Alfonso Badon and Arnold Arellano from that of accused Nilo Cafino as the last named accused was then, as he still remains, at large.

Upon arraignment, accused-appellants Alfonso Badon and Arnold Arellano entered a plea of not guilty and trial thereafter ensued.

The Office of the Solicitor General summarized the facts as viewed by the prosecution witnesses, to wit:

Edwin Gomez was a bus conductor and inspector working at the Ceres Bus Company (p. 12, TSN, August 28, 1990). His wife, Florencia, and their children live with him in Barangay Cabangahan, Negros Oriental (pp. 6-8, Id.). Among their neighbors is Demetrio Macayan, Sr. whose house is about thirty (30) meters away from the common residence of Restituto Elma Arellano, his son, Arnold (herein appellant), and his stepson, Alfonso Badon (herein appellant). (p. 5, TSN, December 4, 1990; pp. 3-4, TSN, February 18, 1994). Alfonso is the nephew of Glicerio Badon, the barangay captain at Cabangahan (p. 7, TSN, November 4, 1986).

On June 17, 1983, at half past 7:00 o'clock in the evening, Demetrio was downstairs in his house when he suddenly heard gun shots (p. 5, TSN, December 4, 1990). Shortly, Edwin appeared at Demetrio's doorstep,

asking for help because Restituto had shot him when he (Edwin) passed by the house of Restituto (Ibid.). Demetrio readily obliged and decided to go to their barangay captain for assistance. On their way to Glicerio's house, Edwin related to Demetrio that while he was passing the house of Restituto, the latter accused Edwin as the assassin hired by Remigio Asenas Quiqui a.k.a. Baloloy to kill him. Then, Restituto shot Edwin. Confirming Edwin's story is the wound on his breast which Demetrio saw (p. 6, Id.).

Arriving at the house of Glicerio, Edwin requested that he be brought to a hospital so his wound may be treated (pp. 6-7, TSN, December 4, 1990). Since there was no available transportation, Glicerio with some companions went to the house of Crispin Encontad to borrow his pedicab. Crispin agreed and when they returned to the house of Glicerio to pick up Edwin (Ibid; pp. 8-9, TSN, June 7, 1991), Crispin saw a bullet wound on the chest of Edwin who told him he was shot (pp. 10, 12-13, TSN, June 7, 1991). Thereafter, Edwin was seated on the passenger side of the pedicab and ready to be taken to the hospital. However, Alfonso and Arnold, together with Nilo Cafino, came rushing in (p. 7, TSN, December 4, 1990; p. 13, TSN, June 7, 1991). With a bolo two (2) feet long, Alfonso stabbed Edwin who, luckily, was able to parry the thrust which instead landed on the pedicab roofing that was torn as a result (p. 14, TSN, July 7, 1991). Edwin was not as lucky the next time as Alfonso succeeded in stabbing him on the breast. As Edwin cried out, he disembarked from the pedicab and tried to walk away. But Arnold and Nilo followed and shot Edwin with a .38 caliber pistol (p. 8, TSN, December 4, 1990; pp. 14-15, TSN, June 7, 1991). Edwin fell to the ground and lay prostrate. As Nilo left the scene, Alfonso and Arnold took turns in hacking Edwin many times with a bolo. Finally, they walked away leaving their victim dead (pp. 8-12, TSN, December 4, 1990; pp. 15-18, TSN, June 7, 1991).

Meanwhile, Demetrio and the other neighbors either scampered away or inconspicuously retreated from the scene of the crime out of fear (p. 13, TSN, November 4, 1986; p. 19, TSN, December 4, 1990). On the other hand, Glicerio sought assistance from barangay Malo whose barangay captain reported the incident to the Siaton Police Station (p. 13, TSN, November 4, 1986). Responding to the report, SPO3 Donald Gadingan and other policemen went to Cabangahan and found the dead body of Edwin lying along the highway near Glicerio's house. The police investigated the incident and requested a medico legal to conduct an autopsy of Edwin (pp. 14-15, TSN, November 4, 1986; pp. 6-9, TSN, August 29, 1995). Subsequently, a municipal health officer at the Siaton District Hospital issued the certificate of death of Edwin (pp. 8-9, 12, TSN, October 24, 1989).

(pp. 4-7, Brief for the Plaintiff-Appellee.)

Based on the death certificate issued by Health Officer Rodolfo P. Jalalon, Edwin Gomez died of shock, hemorrhage, and stab and bullet wounds (p. 282, Record).

Accused-appellants denied killing the victim. In their Brief, they present their own account of the incident as follows:

That at around 8 o'clock in the evening of June 17, 1983, Restituto Arellano, father of accused Arnold Arellano and step-father of accused Alfonso Badon was bagging copra (filling copra inside the sack) in his house at Cabangahan, Siaton, Negros Oriental; and while accused Alfonso Badon was lying in a bed in the piggery nearby.

Edwin Gomez arrived in the house of Restituto Arellano riding on a bicycle and after parking his bicycle in the fence nearby, he (Edwin) went to the house of Restituto Arellano and asked the latter whether he is hauling the copra the following day.

Edwin in an angry manner told that he (Arellano) should haul his copra the following day. And so Arellano answered Edwin by saying: "Why should you dictate me? And Edwin raised his shirt and said: "Do you know what is this?; and Arellano saw a .38 caliber pistol on the waistline of Edwin.

The gun, .38 caliber pistol, shown by Edwin to Arellano (Exh. "1") is the same gun which he (Edwin) used to carry with him before the incident.

Thereafter, Edwin was pulled by his companion, a certain Susing Alama and while they were talking on the national highway, Susing Alama told Edwin that Al (Alfonso Badon) is there in the piggery lying down. So Edwin said: "Let's go"; and both of them proceeded toward the piggery where Al (Alfonso Badon) was lying.

When Edwin and Susing were walking towards Alfonso Badon, they were chased by a barking dog which jumped at Edwin. Edwin fired his gun towards where Al was located and Al jumped down to the ground. Edwin shouted to Al: "Isang bala ka lang", which means "you are only good for one bullet".

Edwin proceeded to the place where Al was and at the same time, the dog continued barking at him (Edwin) and Al was able to hold the gun of Edwin and they (Edwin and Al) wrestled with which each other and the gun fired for two (2) times.

While Edwin and Al were wrestling, Al fell to the ground; and while Edwin was on top of Al, Susing Alma fired his gun, and Edwin said in the local dialect: "Yawa Bay, naigo ko", which means: "Yawa Bay, I am hit:!

After the two (Edwin and Al) were separated, Edwin went to a coconut tree and hid thereat. While hiding on said coconut tree, Edwin touched his breast and his blood from his breast was wiped by him (Edwin) on the trunk of the coconut tree (Exhs. "6" to "6-A"). After few minutes, Edwin left the coconut tree and went to the road and said: "You wait because I will get bullets".

After Edwin promised to come back as soon as he gets the bullets, Al

(Alfonso Badon) prepared himself inside their house with a "spear, a stone and a bolo". Alfonso Badon did NOT go out anymore that night outside the perimeter of their house, although he learned later on that Edwin Gomez died that evening near the house of Barangay Captain Glicerio Badon.

Accused Arnold Arellano have not left their house that evening of June 17, 1983.

After Edwin left the perimeter of the house of Restituto Arellano and promised to come as soon as he gets bullets, Edwin had a fight with accused Nilo Cafino as testified to by Restituto Arellano. But when Edwin drew his gun, Nilo Cafino ran. After the lapse of around seven (7) minutes, Restituto Arellano saw Demetrio Macayan stabbed Edwin several times.

Thereafter, Edwin went to the house of Barangay Captain Glicerio Badon which is around one hundred meters (100) away from the house of Restituto Arellano where herein accused Alfonso Badon and Arnold Arellano were preparing themselves just in case Edwin Gomez would fulfill his promise to come back when he had already several bullets.

When Edwin Gomez reached the house of the Barangay Captain, he (Edwin) requested to be brought to the hospital; the Barangay Captain saw Edwin carrying the gun.

(pp. 5-8, Brief for the Accused-Appellants.)

On July 16, 1996, the trial court promulgated its judgment of conviction and accordingly disposed:

WHEREFORE, judgment is hereby rendered finding accused Alfonso Badon and Arnold Arellano guilty beyond reasonable doubt of the crime of Murder and imposes upon each of said accused the penalty of Reclusion Perpetua, with all the accessory penalties provided by law.

Each of said accused is directed to pay the heirs of the deceased Edwin Gomez the sum of P50,000.00 as civil indemnity for death, P6,829.35 as burial expenses and P15,000.00 as, and for, attorney's fees, plus proportionate cost.

The property bond posted for accused Alfonso Badon on September 20, 1993, as well as the bond posted for accused Arnold Arellano on November 15, 1993, are ordered cancelled and both accused are ordered immediately committed to the custody of the Provincial Warden.

Issue the corresponding warrant for the apprehension of accused Nilo Cafino who is at large, the same to be served by the PNP Police Force in the Siaton Police Station and by the NBI Manila, which warrant need not be returned to this Court until said accused is apprehended.

The effects and instruments of the crime are ordered confiscated in favor