

SECOND DIVISION

[G.R. No. 120160, July 13, 1999]

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
RODOLFO ATREJENIO Y LIBANAN, ACCUSED-APPELLANT.**

D E C I S I O N

MENDOZA, J.:

This is an appeal from the decision^[1] of the Regional Trial Court of Manila, Branch 12, finding accused-appellant Rodolfo Atrejenio y Libanan guilty beyond reasonable doubt of murder and sentencing him to suffer the penalty of *reclusion perpetua* and to indemnify the heirs of the victim Bonifacio Olinio y Jose in the amount of P50,000.00.

The information^[2] against accused-appellant alleged ³/₄

That on or about July 27, 1986, in the City of Manila, Philippines, the said accused, with intent to kill, with treachery and evident premeditation, did then and there wilfully, unlawfully and feloniously attack, assault and use personal violence upon the person of one Bonifacio Olinio y Jose by then and there shooting the latter with a home made gun (sumpak) with unknown caliber hitting him on the left chest, thereby inflicting upon him gun shot wound which is necessarily fatal and which caused the death of the said Bonifacio Olinio y Jose thereafter.

CONTRARY TO LAW.

Accused-appellant pleaded not guilty to the charge, whereupon trial commenced.

The prosecution presented two alleged eyewitnesses, Lito J. Olinio and Leonito Toltol, and three other witnesses, Dr. Marcial G. Cenido, Patrolman Salvador C. Fradejas, and Ernie R. Magtibay, in support of its case.

Lito J. Olinio, first cousin of the victim, testified that while he and Bonifacio Olinio were walking along Osmeña Street towards Panday Pira Street in Tondo, Manila, at about 8 p.m. on July 27, 1986, he saw accused-appellant, a neighbor of two weeks, standing alone at the back of a culvert and taking cover in a corner near a concrete fence, which was eight arm lengths away from them. When they were about five arm lengths away from where he was, accused-appellant shot Bonifacio Olinio with a .38 caliber revolver. Accused-appellant held the gun in his right hand, supported at the bottom by his left hand. Lito J. Olinio said he saw accused-appellant shoot the victim because of the light coming from the electric post. As the victim fell to the pavement, Lito leaned towards his left and tried to lift the victim, even as accused-appellant fled. As Lito went to the aid of the victim, the latter told Lito he had been shot by his enemy, the accused-appellant. The victim was placed on a passenger

jeepney and taken to the Mary Johnston Hospital, but he was already declared dead on arrival. Lito J. Olino later accompanied Pfc. Salvador Fradejas to the house of accused-appellant and identified the latter as the perpetrator as he came out of the house.

Accused-appellant was taken to the police detachment at Pritil Street by a companion of Pfc. Fradejas. He was later brought by Pfc. Fradejas to the Homicide Section of the Western Police District, Manila where, at 11 p.m., accused-appellant executed a sworn statement (Exh. A) before Cpl. Leonardo Miguel in the presence of Pfc. Fradejas.^[3]

Leonito Toltol,^[4] a neighbor of the victim, corroborated the testimony of Lito J. Olino. Leonito Toltol stated that at about 8 p.m. of July 27, 1986, he was in a store in front of his house along Osmeña Street buying some cigarettes. He saw the shooting which occurred at the corner of Osmeña and Panday Pira Streets. The scene of the crime was about six arm lengths away from his house. He identified accused-appellant as the assailant. He said that the victim was in the company of Felicito Olino (Lito J. Olino) when he was shot. Accused-appellant used a .38 caliber revolver in killing the victim. He recognized accused-appellant because of the light from a nearby store. Leonito Toltol showed how accused-appellant fired at the victim by holding the gun in his right hand, his finger on the trigger, and supporting it with his left hand. After a shot had been fired, the victim fell to the pavement. Toltol went home immediately without giving assistance to the victim because he was afraid. However, on the following day, July 28, 1996, he informed Lito J. Olino that he was an eyewitness to the shooting incident.^[5]

Dr. Marcial G. Cenido, medico-legal officer of the Western Police District, Manila, testified that he performed an autopsy on the deceased at 10:30 p.m. of July 28, 1986. The victim was dead on arrival at the Mary Johnston Hospital. He prepared the following documents:

1. Identification slip of the victim (Exh. B) at 10:00 p.m. of July 27, 1986 indicating that the deceased was identified by Lito J. Olino, with the following notations:

time of injury: 8:00 p.m. of July 27, 1986

time of death: 8:30 p.m. of July 27, 1986

2. Certificate of Death (Exh. C) stating that the cause of death was a gunshot wound at the left anterior thorax, lacerating the upper lobe of the left lung
3. Sketch of human body (Exh. D) illustrating the gunshot wound on the left anterior thorax (slightly above the left nipple - Exh. D-1) and stating that a round pellet ("bolitas" - Exh. F) 0.6 cm in diameter (Exh. D-2) was recovered
4. post mortem findings (Exh. E)^[6]

POST MORTEM FINDINGS

EXTERNAL INJURY AND EXTENSION INTERNALLY:

1. Gunshot wound, left anterior thorax, 50.5 inches from the heel, 12.5 cm. from the anterior midline, measuring 0.4 cm x 0.5 cm. and with the collar abrasion measures 0.7 cm. x 0.8 cm., directed obliquely backwards, slightly downwards and slightly towards the midline, thru the 5th intercostal space lacerating the upper lobe of the left lung and pulmonary vein, and with the recovery of a round pellet embedded in the left posterior 8th intercostal muscle near its vertebral end.

INTERNAL FINDINGS:

1. Perforation of the left upper lobe of the lungs lacerating the pulmonary vein, with massive left hemothorax and generalized pallor of the internal organs and tissues; and
2. Recovered from the stomach about a glassful of blackish liquid materials and without alcoholic odor.

CAUSE OF DEATH

Gunshot wound, left anterior thorax lacerating the upper lobe of the left lung.

According to Dr. Cenido, the gunshot wound on the left anterior thorax (Exh. D-1) of the victim was fatal because it lacerated the left lung. A round pellet ("bolitas," Exh. F), measuring 0.6 cm. in diameter (Exh. D-2), was recovered from the posterior aspect of the left thorax at the 8th intercostal space, with massive tissue near the vertebral end of the victim's body. The trajectory was obliquely backwards, slightly downwards and slightly towards the midline of the victim's body. From the trajectory of the projectile, he concluded that the assailant was right-handed and was positioned at the left lateral side (left anterior lateral position) and slightly in front of the victim when he shot the latter. The assailant could have been on an elevated place in relation to the place where the victim was, or the assailant could have been taller than the victim. Except as to the internal extension of the wound at the point of entry, Dr. Cenido noted the absence of any defensive wound, laceration, or any other form of hematoma or contusion which suggests that there was no struggle or defense at all put up by the victim. Although it was not a shot at close range, he estimated that the victim could have been five feet away or less from the assailant. There was absence of alcohol in the contents of the stomach.^[7]

Patrolman Salvador C. Fradejas, investigator assigned at the Homicide Section, Investigation Division of the Western Police District, Manila, testified that at about 9 p.m. of July 27, 1986, their office received a call from one Felix Garote of the Mary Johnston Hospital informing him of the victim who was admitted 8:30 p.m. and pronounced dead on arrival by one Dr. Harry Sopan. Pfc. Fradejas said he went to the hospital to conduct an investigation and saw Lito J. Olino, who informed him that he could identify the accused-appellant if he saw him again. Lito J. Olino also told him that he knew where accused-appellant's house was, which was from six to eight meters from the scene of the crime. They proceeded to the scene of the crime at the corner of Osmeña and Liwayway (Panday Pira) Streets, Barrio Magsaysay, Tondo, Manila. Upon reaching the house of accused-appellant at 51-A Quirino Street, Barrio Magsaysay, Tondo, Manila at about past 10 p.m., Pfc. Fradejas knocked on the door. Whereupon, accused-appellant came down and opened it. He was identified by Lito

J. Olino. There were about three persons in the house of accused-appellant at the time he voluntarily went with the police. Together with Lito J. Olino, he took accused-appellant to the police station. He was present when Lito J. Olino executed his sworn statement before Cpl. Leonardo Miguel. Pfc. Fradejas investigated the accused-appellant after apprising him of his constitutional rights. According to Pfc. Fradejas, accused-appellant did not give any written statement, but he orally admitted his guilt. Accused-appellant claimed that the reason why he shot the victim was because they had a fight a month before during a benefit dance in Barrio Magsaysay, Tondo, Manila and just the day before, on July 26, 1986, the victim was looking for him. There had been an enmity between the two of them. Pfc. Fradejas prepared the Advance Information (Exh. G - Case Report No. 86-1753), dated July 29, 1986, and the Booking and Information Report (Exh. H - I.S. No. 86-17319) in which he stated that he had arrested accused-appellant on July 29, 1986 after conducting an investigation. Thereafter, Pfc. Fradejas filed a case for murder against accused-appellant in the Office of the City Fiscal of Manila.^[8]

Ernie R. Magtibay, a ballisticsian of the National Bureau of Investigation, testified that, from 1980 to 1983, he worked as an armorer reloading ammunition with the use of a machine and helping in ballistic examinations. He explained that when the shell is fired, the shell is left and the primer, which is hit by the pin of the gun, is fired. In reloading with the use of a machine, he first changes the primer and then places the gun powder, the pellet, and then the wax. The number of pellets which can be removed from a bullet depends upon its size. If it is smaller, 12 pellets or more can be removed. However, if it is the legal size, only 1 or 2 pellets can be removed. It is possible that one pellet can be filled into a shell by placing the pellet over the powder with the wax over it. The normal velocity of an ordinary shell is 1,000 feet, more or less, while the particular tendency of an ordinary shell is 3.5 range. The effective range of an ordinary .38 caliber is 150 yards. The gun ammunition, when reloaded, can kill a person within 10 yards. He had experimented reloading pellets, which are usually round, into a .38 caliber shell. The pellet reloaded in a .38 caliber shell, when fired, retains its appearance when it hits a soft object. Otherwise, hitting a hard object will cause it to be deformed.^[9]

On the other hand, the evidence for the defense is as follows:

Accused-appellant **Rodolfo Atrejenio y Libanan** testified that before 8 p.m. of July 27, 1986, he played basketball with Alfredo Ramirez and Eduardo Viojan at the basketball court of Don Bosco Youth Center. Between 8 and 9 p.m., he was in front of his house at Liwayway Street talking with his friends, Alfredo Ramirez and Eduardo Viojano, when the victim, Leonito Toltol, and another person whom he did not know (Lito J. Olino) passed by on their way to Osmeña Street. The place was lighted. He had known the victim, Bonifacio Olino, who was a welder at a shop in Barrio Magsaysay, for the past two years. He thought that the victim and his companions were drunk because one of them was walking in a zigzag. While thus talking with his friends, accused-appellant claimed he saw people scampering, even as they were screaming that there was a "riot" and he heard a loud gunshot. For this reason, he and his friends went inside the yard of his house. He tried to find out what was happening on Osmeña Street, but he could not see anything because it was dark. After a few minutes, two policemen arrived at his house, while another one stayed in a police jeep. He was taken to the Detective Bureau at U.N. Avenue, Manila. Later, accused-appellant learned that he had been implicated in the killing of

the victim. He vehemently denied committing the crime, claiming that he was talking with his two friends when the shooting took place and that he had not the slightest intention to kill the victim. He further stated that the probable reason why Leonito Toltol and Lito J. Olino thought he was involved in the killing of the victim was because of an altercation which they had at a dance party in Barrio Magsaysay, Tondo, Manila. Somebody connected the electrical current from the club to a jeep parked in front of that place. By reason thereof, some onlookers were electrocuted and a brawl ensued. He intervened to pacify those involved in the skirmish (including the victim), since he was sergeant-at-arms of said club. He did not know if the victim was the one who first caused trouble. He likewise said that there was no previous misunderstanding with Leonito Toltol and Lito J. Olino.^[10]

Eduardo Viojan, a neighbor and a friend of accused-appellant, corroborated accused-appellant's testimony. He testified that between 8 and 9:30 p.m. of July 27, 1986, he was conversing about a basketball game with accused-appellant and Alfredo Ramirez. They were seated on a bench in front of the house of accused-appellant on Liwayway Street, Tondo, Manila when the victim, Lito J. Olino, and another companion passed by going to Osmeña Street. The victim and Lito J. Olino appeared drunk ("*medyo nakainom*") as they were walking unsteadily. Accused-appellant merely smiled at them. He had known the victim and Lito J. Olino for the past two years because both of them were then working in a welding shop and sometimes he would ask them to do some welding job. According to Eduardo Viojan, after a while, there was a commotion and they shouted "*may away, may away!*" Together with accused-appellant and Alfredo Ramirez, they went to the yard of accused-appellant's house because the people were coming towards their place. Then, he heard a gunshot at Osmeña Street. He learned that the person shot was Bonifacio Olino. After a while, policemen came. One introduced himself and entered accused-appellant's house. Upon learning that the policeman was looking for him, accused-appellant opened the door and said, "I am the one." Whereupon, accused-appellant was taken to the police station. The mother and the sister of accused-appellant were there, too, when the policemen arrived at accused-appellant's house. Accused-appellant was accompanied by his aunt and sister to the Detective Bureau. He denied that it was accused-appellant who shot Bonifacio Olino because he and accused-appellant were talking with each other when the shooting took place.^[11]

Alfredo Ramirez, another childhood friend and neighbor of accused-appellant, corroborated the claim of Eduardo Viojan. He testified that between 6 and 7 p.m. of July 27, 1986, he played basketball with accused-appellant and Eduardo Viojan at the compound of Don Bosco Youth Center. Later, between 8 and 9 p.m., while the three of them were talking, the victim and his companions passed by. They appeared to be drunk. He had known the victim, who was a welder, for about two years. He knew Lito J. Olino, also a welder. Alfredo Ramirez claimed that, after a while, he saw people scampering, shouting that there was a "riot" at Osmeña Street. They then heard a gunshot and learned that someone had been killed. They, therefore, got inside the yard of accused-appellant's house for fear of getting involved in the trouble. Ramirez said that, later that night, three policemen went to the house of accused-appellant and arrested him. Accused-appellant was taken to the Detective Bureau, Precinct 5, on U.N. Avenue in Manila. Ramirez confirmed that the victim and accused-appellant had a grudge against each other as a result of an incident during which the victim connected an electrical current to a jeep belonging to a member of the club (of which accused-appellant was also a member), as a