

## SECOND DIVISION

[ G.R. No. 120641, October 07, 1999 ]

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
ROGELIE FLORO, ACCUSED-APPELLANT.**

### D E C I S I O N

**MENDOZA, J.:**

This is an appeal from the decision<sup>[1]</sup> of the Regional Trial Court of Pagadian City, Branch 19, finding accused-appellant Rogelie Floro guilty beyond reasonable doubt of murder and sentencing him to suffer the penalty of *reclusion perpetua* and to indemnify the heirs of the victim, Tornino Salacop, in the amount of P50,000.00.

The information in this case alleged<sup>[2]</sup>:

That on or about the 7th day of April, 1993 at about 8:30 o'clock in the evening, at Sitio Sirawak, Lison Valley, Pagadian City, Philippines, and within the jurisdiction of this Honorable Court, said accused did, then and there with malice aforethought and with deliberate intent to take the life of Tornino Salacop, willfully, unlawfully, feloniously and treacherously shoot the latter with a gun, first wounding him on the left arm and left leg, and afterwards, struck him repeatedly on the head, breaking the same, cutting his nose, all wounds collectively being necessarily mortal, causing the direct and immediate death of said Tornino Salacop.

All contrary to law, and with qualifying circumstance of treachery or alevosia.

CONTRARY TO LAW.

Accused-appellant pleaded not guilty, whereupon trial ensued.

The prosecution presented an alleged eyewitness, Carlito Bawan, and two other witnesses, Wilton Bawan and Benjamin Vidal, in support of its case.

**Carlito S. Bawan** testified that at about 8:30 p.m., on April 7, 1993, he and the victim were walking along a trail on a cassava plantation owned by accused-appellant, at Sitio Sirawak, Barangay Lison Valley, Pagadian City, when suddenly accused-appellant Rogelie Floro appeared from the plantation and shot the victim. Carlito was then about three meters behind the victim. The victim was hit on the left knee, the bullet penetrating his left thigh and injuring his left hand. Carlito said he got so scared that he ran away, but, at about five (5) meters away from the victim, he stumbled to the ground. When he looked back, he saw accused-appellant strike the victim on the head several times with the gun. Carlito identified the gun used as a 12-gauge homemade shotgun and recognized accused-appellant as the assailant. He said there was moonlight in the area, and he recognized accused-appellant who had been his neighbor for five (5) years. His house was about 150 meters away

from the accused-appellant's house. In the morning of April 9, 1993, he went to his uncle, Wilton A. Bawan, and told him the whole incident. The two then reported the matter to barangay kagawad Benjamin Vidal who took them to barangay captain Charlie Babayson. Carlito told Babayson that accused-appellant killed the victim. Carlito, Wilton, and Vidal then went to the scene of the crime and saw the body of the victim still there. Before the shooting incident, Carlito said, he used to see accused-appellant carry a 12-gauge homemade shotgun. He stated that he and the victim were first cousins.<sup>[3]</sup>

**Wilton A. Bawan**, uncle of the victim, testified that at 8:00 a.m., on April 9, 1993, he learned from Carlito, his nephew, about the killing of Tornino Salacop. He accompanied Carlito to barangay kagawad Benjamin Vidal, who accompanied them to the house of barangay captain Charlie Babayson. Wilton, together with Carlito and Vidal, then proceeded to Sitio Sirawak, Barangay Lison Valley, where they saw the body of the victim on the roadside. Wilton observed that the body had wounds on the left thigh, nose, and head. Wilton said he knew accused-appellant because they were friends.<sup>[4]</sup>

**Benjamin Vidal**, barangay kagawad of Sitio Sirawak, Barangay Lison Valley, Pagadian City, confirmed that in the morning of April 9, 1993, Wilton and Carlito came to his house to report the death of Tornino Salacop. He said he accompanied Wilton and Carlito to the house of barangay captain Charlie Babayson. From there they went to the scene of the crime and saw the body of the victim. It bore wounds on the head, nose, left hand, and left thigh. Vidal ordered the body immediately buried as it had been there for almost two days. Vidal said he had known accused-appellant prior to the incident as the latter was also a resident of Barangay Lison Valley.<sup>[5]</sup>

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

Accused-appellant **Rogelio Floro** denied the charge, claiming that on April 7, 1993, he was in the house of the Miñozas, his parents-in-law, at Sitio Sirawak, Barangay Lison Valley, Pagadian City. He testified that he stayed there from April 4 to April 8, 1993 to assist his father-in-law in harvesting cassava. He said he wanted to go home to his family in Sitio Sirawak on April 7, 1993, but because work on the farm was not yet finished, he could not do so. When asked about the weather condition on the night of April 7, 1993, he claimed it was cloudy and the sky was dark, although he did not know if it rained as he was already asleep by 7:00 p.m. However, he said that when he woke up the following morning, he noticed that the ground was wet. Accused-appellant's house was about two kilometers away from the farm of his father-in-law. The distance can be negotiated within one hour by foot. He claimed he decided to go home on April 8, 1993. His companions were his younger brother and a certain Carling, a neighbor of his father-in-law. He denied having known or met the victim and Carlito S. Bawan, but he admitted knowing Wilton A. Bawan who was also from Barangay Lison Valley. He had no previous quarrel with Wilton. He knew Benjamin Vidal, a barangay kagawad, and he also had no previous misunderstanding with him. He left the house in the afternoon of April 9, 1993 and met one Rodrigo Babao, a CAFGU member, who informed him that Tornino Salacop had been killed. He was allegedly told that the victim had been stabbed on the chest and on the thigh. Later, one Jimmy Paduga, another CAFGU member, also told him about the death of Tornino Salacop. Upon learning of the victim's death, he decided not to go home as he was afraid of the killer who might

be in the farm of his father-in-law. Instead, accused-appellant claimed, he asked his family to move to the house of his parents-in-law where he stayed for two months until he was apprehended on June 26, 1993.<sup>[6]</sup>

**Rodrigo Babao**, a member of the CAFGU, testified that at about 10:00 a.m., on April 9, 1993, he learned about the killing incident from barangay kagawad Ernesto Lagnason. Earlier, Wilton A. Bawan related the incident to the barangay officials. He and Ernesto Lagnason went to the scene of the crime in Sitio Sirawak, Barangay Lison Valley and saw the body of Tornino Salacop. He also met Benjamin Vidal and Wilton Bawan there. He noticed that the victim had sustained one wound on his left thigh near the hip. The wound was round and about 1½ inches in diameter. The victim had some abrasions on the forehead. Babao knew that accused-appellant was residing in the house of his father-in-law. As to the weather condition on the night of April 7, 1993, Babao said that it was not raining. He also said that he asked Carlito and Wilton Bawan who the assailant was, but both stated that they did not know. He did not know if accused-appellant owned a shotgun.<sup>[7]</sup>

**Ernesto Lagnason**, a barangay kagawad in Sitio Sirawak, Barangay Lison Valley, Pagadian City, corroborated Babao's testimony. He testified that at about 10:30 a.m. on April 9, 1993, he was informed by their barangay captain, Charlie Babayson, about the death of Tornino Salacop. He was accompanied by Wilton A. Bawan and Rodrigo Babao to the scene of the crime in Sitio Sirawak, Barangay Lison Valley and there saw the body of the victim. He knew the victim to be the nephew of Wilton A. Bawan. He noticed that the victim sustained a wound on his left thigh and had an abrasion on his forehead. The scene of the crime was a cassava farm. The plants were taller than the height of an average person, and their leaves were abundant. He observed blood stains coming from a nipa hut one meter away from where the body was found. The nipa hut was owned by accused-appellant's brother-in-law, Ranil Miñoza. As to the weather condition on the night of April 7, 1993, Lagnason claimed it was dark and drizzling.<sup>[8]</sup>

The defense also offered as documentary evidence the affidavits of prosecution witnesses Benjamin Vidal, Wilton A. Bawan and Carlito S. Bawan, which were duly marked as Exhs. 1, 2 and 3, respectively.

On rebuttal, **Charlie Babayson**, barangay captain of Sitio Sirawak, Barangay Lison Valley, was presented. He testified that in the evening of April 7, 1993, the moon was shining, and it was not raining. In the morning of April 9, 1993, he learned from Carlito S. Bawan and Wilton A. Bawan that accused-appellant had killed Tornino Salacop on the night of April 7, 1993. He asked Rodrigo Babao and Ernesto Lagnason to verify the report about the killing. He knew accused-appellant very well, because his wife was one of the sponsors in accused-appellant's wedding. After the wedding, accused-appellant resided at Sitio Dumalian which is part of Barangay Lourdes, near Barangay Lison Valley. He stated that he never had any misunderstanding with accused-appellant.<sup>[9]</sup>

On March 14, 1995, the trial court rendered its decision finding accused-appellant guilty of murder. The dispositive portion of its decision reads:

WHEREFORE, in view of the foregoing discussion, this Court is convinced that accused Rogelio Floro is guilty beyond reasonable doubt of the crime of murder he is herein charged. There being neither aggravating nor mitigating circumstances attending the commission of the offense, this

Court imposes upon accused the penalty of *reclusion perpetua*, conformably with the new doctrine adopted by the Supreme Court in *People v. Muñoz*, 170 SCRA 107, with all the accessory penalties prescribed by the law, and to pay the heirs of victim Tornino Salacop the sum of P50,000.00 by way of civil indemnity, without subsidiary imprisonment in case of insolvency. Accused having been a detention prisoner since June 18, 1993 up to the present, he is hereby credited four-fifth (4/5) of such preventive detention in the service of his sentence herein imposed.

SO ORDERED.

Hence, this appeal. Accused-appellant contends that :

I. THE TRIAL COURT GRAVELY ERRED IN CONVICTING ACCUSED-APPELLANT NOT ON THE BASIS OF THE STRENGTH OF THE PROSECUTION'S EVIDENCE BUT RATHER ON THE WEAKNESS OF THE EVIDENCE FOR THE DEFENSE.

II. THE TRIAL COURT GRAVELY ERRED IN NOT ACQUITTING ACCUSED-APPELLANT DESPITE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.

III. ON THE ASSUMPTION THAT ACCUSED-APPELLANT IS GUILTY, THE TRIAL COURT GRAVELY ERRED IN CONVICTING HIM OF MURDER INSTEAD OF HOMICIDE.

These contentions have no merit.

**First.** The prosecution evidence fully establishes the guilt of accused-appellant. The eyewitness, Carlito S. Bawan, who was with the victim at the time of the shooting, identified accused-appellant as the assailant. He recognized him, having been his neighbor for five years, and their houses were only 150 meters away from each other. No reason was shown for Carlito to falsely implicate accused-appellant. In fact, they had no previous quarrel. Hence, Carlito's positive and categorical declarations on the witness stand should be given full faith and credence. The fact that Carlito and the victim were first cousins does not detract from his credibility. It is settled that in the absence of a showing of an improper motive on the part of a witness, his testimony is not affected by his relationship to the victim.<sup>[10]</sup> The narration of Carlito that accused-appellant used a 12-gauge homemade shotgun in killing the victim was corroborated by the certificate of death (Exh. A) which stated that the immediate cause of death was gunshot wound. Carlito had a vantage position as he was only three meters away when the victim was shot by accused-appellant. Even defense witnesses Rodrigo Babao and Ernesto Lagnason testified that the body bore a round wound on its left thigh near the hip portion which was 1½ inches in diameter.

**Second.** Accused-appellant interposes the defense of alibi. He contends that even if he was in Sitio Sirawak, Barangay Lison Valley at the time of the incident, it was impossible for him to have committed the crime as he lived two kilometers away from the place where the killing took place.

We cannot give credence to his claim of alibi. As we have ruled: