

## SECOND DIVISION

[ G.R. No. 118649, March 09, 1998 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JAIME REYES Y AROGANSIA, ACCUSED-APPELLANT.**

### D E C I S I O N

**REGALADO, J.:**

Accused-appellant Jaime Reyes y Arogansia seeks the reversal of the decision<sup>[1]</sup> of Branch 27 of the Regional Trial Court in Sta. Cruz, Laguna, dated October 5, 1994, declaring him guilty beyond reasonable doubt of the crime of murder as then punished under Article 248 of the Revised Penal Code, before its amendment by Republic Act No. 7659.

By way of backdrop, appellant was arrested by agents of the National Bureau of Investigation in Parañaque pursuant to a warrant of arrest<sup>[2]</sup> issued by the Municipal Trial Court of Sta. Cruz, Laguna, and was turned over to the custody of the Philippine National Police of said province. On May 2, 1990, appellant was admitted to bail. The criminal complaint was later amended to change his middle name stated therein from “Bautista” to “Arogansia.”<sup>[3]</sup>

Appellant failed to submit his counter-affidavit as ordered by the municipal trial court, hence he was deemed to have waived his right to preliminary investigation. The records of the case were then forwarded to the Office of the Provincial Prosecutor of Laguna which filed an information on July 2, 1990 charging herein appellant with murder and alleging –

“That on or about February 15, 1990, in the municipality of Santa Cruz, province of Laguna, Republic of the Philippines and within the jurisdiction of this Honorable Court, the abovenamed accused while conveniently armed with a handgun and motivated by hate and revenge with intent to kill, with evident premeditation, by means of treachery, did then and there willfully, unlawfully and feloniously attack, assault and shoot at MEYNARDO ALTOBAR y MENGUITO with the said weapon, thereby the latter suffered gunshot wound which directly caused his death to the damage and prejudice of his surviving heirs.

That in the commission of the crime the qualifying circumstances were present: (1) evident premeditation & treachery.”<sup>[4]</sup>

During his arraignment with the assistance of his counsel *de officio*, appellant pleaded not guilty to the crime charged.<sup>[5]</sup> The pre-trial conference was terminated on November 28, 1990 and, thereafter, trial proceeded. In the course of the proceedings, the bail of appellant was cancelled and he was ordered arrested by virtue of a bench warrant for failure to appear on a scheduled hearing.

Prosecution witness Iluminado Broas testified that on or about 7:00 o'clock in the evening of February 15, 1990, he and the victim, Meynardo "Jun Boy" Altobar, Jr., together with another prosecution witness, Joel Apundar, were seated in front of the sari-sari store of Edwin Laborde at M.H. del Pilar Street, Sta. Cruz, Laguna. They were talking with each other when suddenly a "bemoustached" man approached them and asked Altobar, Jr., "Ikaw ba si Jun Boy?" When the latter replied by nodding his head, the man, who was later identified as herein appellant, immediately pulled out a gun from something which looked like a book tightly held under his left armpit and shot the victim, hitting him in the neck.

Broas was able to push the wounded victim aside before the assailant pulled the trigger for a second shot. Thereafter, appellant pointed the gun at the group and pulled the trigger, but the gun jammed and did not fire. Appellant thereupon ran towards the opposite direction, obviously to avoid being caught or identified by them.<sup>[6]</sup> The group rushed to the aid of the victim who sat slouched on the pavement, bathed in his own blood, about a meter away from where they were seated. They hailed a tricycle and brought the victim to the hospital where he expired.<sup>[7]</sup>

Prosecution witness Joel Apundar corroborated the testimony of Broas in its material points. He testified further that when appellant escaped by running towards the direction of the P. Guevarra Memorial High School, he shouted, "Habulin ninyo iyan, habulin ninyo!" which was heard by several persons within the vicinity.<sup>[8]</sup> Broas and Apundar both testified that the man was wearing a piece of lady's stocking as a mask, RayBan type sunglasses, a "sure-fit" cap,<sup>[9]</sup> black pants and a white t-shirt.<sup>[10]</sup>

Another prosecution witness, Johnny Abao, testified that at around 7:00 o'clock in the evening of February 15, 1990, he was in the company of Felix Herbosa and Jun Laborte at Del Pilat Street in the same town. They heard two gunshots and somebody shouted, "Habulin ninyo." Then he saw a man running away from the direction where the gunshots and shout emanated and going towards them. Their group was about 30 meters away from the Laborte store. The man ran along Del Pilar Street, turned right to Kamatoy Street, and then right to P. Guevarra Street. As he ran after the man, he picked up something for his defense. He only gave up the chase when he saw that the man had boarded a slow moving tricycle waiting along P. Guevarra Street. He later helped witnesses Apundar and Broas in bringing the victim to the hospital on board a tricycle driven by Martin Buena.<sup>[11]</sup>

Dr. Guia G. Abad, a medico-legal officer, conducted an autopsy on the body of the victim. Her findings were set forth in a Medico Necropsy Report, marked as Exhibit "G" by the prosecution, as follows:

"1. One circular wound measuring 2 mm x 2 mm penetrating located 2 cm above the medial insertion of the left clavicle directed rightwards to a wound with irregular edges measuring 1 cm x 1 cm located 12 cm from midspinal on right upper back at a level 4 cm below the lower border of nape, just above the upper edge of right scapular bond.

**CAUSE OF DEATH:**

Shock due to hemorrhage due to penetrating wound."<sup>[12]</sup>

Another prosecution witness Manolito A. Manuel testified that, while riding on his racer-type bicycle passing along P. Guevarra Street on his way home to Barangay Sto. Angel

Sur in the same town, he heard two gunshots which he ignored. Upon reaching the corner of P. Guevarra and Kamatoy Streets, he fell from his bicycle because he was nearly sideswiped by a passenger jeep. While sprawled on the street with his bicycle, he saw a man running towards a slow-moving tricycle and who then boarded the same. Inside the tricycle, the man removed his mask and put a gun on the passenger seat.<sup>[13]</sup> When Manuel stood up and rode his bicycle again, he noticed that the man was staring at him. He was more or less five meters away from the said tricycle and the place was illuminated by the lamppost.

Just as he reached the big bridge, he noticed that the said tricycle, with the same driver and passenger, was moving behind him. Upon reaching a street corner, he made a full stop and again noticed the driver and the passenger of the said tricycle giving him an intimidating look. He thereafter proceeded towards his home and the tricycle went in the direction of Patimbao.<sup>[14]</sup> He later identified the passenger as appellant,<sup>[15]</sup> and the driver as Ernan Reyes, a son of Ely Reyes who is a cousin of appellant.<sup>[16]</sup>

Appellant, as expected, denied having killed Altobar, Jr. He testified that on the date and time in question, he was at the Parañaque Cockpit owned by Rolly Ligon, together with Obet Legasto and Raul Reyes, on a painting job. The said cockpit is reportedly 85 to 90 kilometers away from Sta. Cruz, Laguna and it would take more than two hours to travel from one place to the other.<sup>[17]</sup> Appellant's alibi was corroborated by his relative, Raul Reyes, who testified that he and appellant were together the whole night of February 15, 1990 and they never left the cockpit compound.<sup>[18]</sup>

However, the prosecution presented two rebuttal witnesses, Serafin Nepomuceno and Eleodoro Anibersaryo to refute this alibi of appellant. Witness Nepomuceno testified that at around 5:30 in the afternoon of February 15, 1990, he was at the house of witness Anibersaryo at Green Village Subdivision, also in Sta. Cruz. They were having a celebration when appellant arrived together with Felix Mercado, Anibersaryo's half brother. Appellant left after drinking a bottle of beer. The celebration did not last long because the group had to attend to important matters in the public market. On their way thereto aboard an owner-type jeep, they saw appellant walking along Toleon Street<sup>[19]</sup> which was a few blocks away from the scene of the crime.

The other rebuttal witness, Eleodoro Anibersaryo, corroborated the testimony of Nepomuceno. He testified that they saw appellant on February 15, 1991 at around 5:30 in the afternoon, first, when appellant arrived in Anibersaryo's house and, second, when appellant was walking along Toleon Street.<sup>[20]</sup> In fact, their group greeted appellant but could not accommodate him in their jeep which was already full.<sup>[21]</sup>

Based on the evidence introduced by the prosecution vis a vis what was adduced by the defense, which will hereafter be discussed, the trial court concluded that it was appellant Jaime Reyes who shot and killed victim Meynardo Altobar, Jr. Thus, on October 5, 1994, the court below rendered the following judgment:

"WHEREFORE, premises considered, the Court finds the accused JAIME REYES y AROGANSIA guilty beyond reasonable doubt of the crime of Murder qualified by evident premeditation defined and penalized under Art. 248 of the Revised Penal Code with the attendant generic circumstance of nocturnity and hereby sentences said accused to suffer the penalty of reclusion perpetua with all its accessory penalties, to indemnify the heirs of the victim Meynardo Altobar y Menguito the amount of ₱90,000.00 for and as actual and compensatory damages inclusive of

expenses incident to the burial, ₱100,000.00 for and as moral damages, ₱50,000.00 for and as exemplary damages and the further sum of ₱20,000.00 for expenses of litigation inclusive of attorney's fee, all without subsidiary imprisonment in case of insolvency and to pay the costs.

In the service of his sentence, the accused shall be credited in full with the period of his preventive imprisonment."<sup>[22]</sup>

Hence, this appeal wherein appellant imputes four supposed errors to the trial court, namely, (1) in finding that treachery attended the killing of the victim Meynardo Altobar, Jr.; (2) in appreciating the aggravating circumstance of evident premeditation to qualify the crime to murder; (3) in appreciating nocturnity as an aggravating circumstance in the commission of the crime; and (4) in convicting him of the crime charged despite the failure of the prosecution to prove his guilt beyond reasonable doubt.<sup>[23]</sup>

Appellants faults the trial court for holding that the killing of victim Altobar, Jr. was attended by treachery. He contends that when he openly approached the victim and asked him, "Ikaw ba si Jun Boy?" the latter must already been alerted and forewarned of an impending attack. Moreover, the attack was frontal as shown by the fact that the victim was hit near the neck<sup>[24]</sup> above the left clavicle. The Court disagrees.

The prosecution evidence meets the requisites for appreciating alevosia in the commission of the crime, viz.: (1) at the time of the attack, the victim was not in a position to defend himself; and (2) appellant consciously and deliberately adopted the particular means, methods or forms of the attack employed by him. The essence of treachery is the sudden and unexpected attack by an aggressor on an unsuspecting victim, depriving the latter of any real chance to defend himself and thereby ensuring its commission without risk to himself.<sup>[25]</sup>

As argued by the prosecution, the fact that appellant approached the victim and asked him if he was "Jun Boy" could not have served as a warning to the victim of an impending harm. It could not have taken appellant more than three seconds to ask the question and immediately after getting a positive response, he fired at the victim.<sup>[26]</sup> This is sustained by reliable witness accounts.

Prosecution witness Iluminado Broas lucidly explained:

"Q: Do you recall of (sic) any unusual incident which happened on that particular occasion while in the process of telling stories among yourselves?

A: Yes, sir.

Q: Will you tell the Court what happened?

A: While we were telling stories at that time, a certain man came and then asked who this Jun Boy is.

Q: Will you tell the Court if you recall the exact words of this man, what was (sic) the exact words?

A: The exact words by the man was (sic) "ikaw ba si Jun Boy?" and then he pulled out a gun from something like a book pressed between his left armpit and then he fired a shot at Jun Boy.