

## EN BANC

[ G.R. No. 119311, October 07, 1998 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROMEO DIANOS, ACCUSED-APPELLANT.**

### DECISION

**VITUG, J.:**

Romeo Dianos has taken an appeal to this Court questioning the decision of the Regional Trial Court of Baguio City, Branch 6, which has found him guilty beyond reasonable doubt of the crimes of Murder, Frustrated and Attempted Murder, after being indicted and tried in Criminal Cases Numbered 8524-R to 8528-R, inclusive. The five separate informations against him read:

Criminal Case No. 8524-R

"The undersigned accuses ROMEO DIANOS and 'JOHN DOE' of the crime of MURDER, committed as follows:

"That on or about the 31st day of December, 1990, in the City of Baguio, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill and with treachery and evident premeditation, conspiring, confederating and mutually aiding with each other, did then and there wilfully, unlawfully and feloniously attack, assault and fire at TERESITA ORTIZ y PABLO, with an armalite rifle, causing upon the latter, acute respiratory failure due to a complete transection of the spinal cord at the level of the 2nd cervical vertebra due to a gunshot wound through the neck, which directly caused her death.

"ALL CONTRARY TO LAW, and with the aggravating circumstances of nighttime and use of motor vehicle."<sup>[1]</sup>

Criminal Case No. 8525-R

"The undersigned accuses ROMEO DIANOS and 'JOHN DOE' of the crime of ATTEMPTED MURDER, committed as follows:

"That on or about the 31st day of December, 1990, in the City of Baguio, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill and with treachery and evident premeditation, conspiring, confederating and mutually aiding with each other, did then and there wilfully, unlawfully and feloniously attempt to kill ZALDY ORTIZ, by firing an armalite rifle, causing injuries on his right leg, thus commencing the commission of the crime directly by overt acts, but did not perform all the acts of execution which should have produced

the crime of Murder, by reason of causes other than their own spontaneous desistance.

"ALL CONTRARY TO LAW, and with the aggravating circumstances of nighttime and use of motor vehicle."<sup>[2]</sup>

Criminal Case No. 8526-R

"The undersigned accuses ROMEO DIANOS and `JOHN DOE' of the crime of ATTEMPTED MURDER, committed as follows:

"That on or about the 31st day of December, 1990, in the City of Baguio, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill and with treachery and evident premeditation, conspiring, confederating and mutually aiding with each other, did then and there wilfully, unlawfully and feloniously attempt to kill VIRGILIO ORTIZ Y PINLAC, by firing an armalite rifle, causing injuries on his thigh, thus commencing the commission of the crime directly by overt acts, but did not perform all the acts of execution which should have produced the crime of Murder, by reason of causes other than their own spontaneous desistance, that is, by the timely arrival of people from the neighborhood who extended assistance to the complainant.

"ALL CONTRARY TO LAW, and with the aggravating circumstances of nighttime and use of motor vehicle."<sup>[3]</sup>

Criminal Case No. 8527-R

"The undersigned accuses ROMEO DIANOS and `JOHN DOE' of the crime of FRUSTRATED MURDER, committed as follows:

"That on or about the 31st day of December, 1990, in the City of Baguio, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill and with treachery and evident premeditation, conspiring, confederating and mutually aiding with each other, did then and there wilfully, unlawfully and feloniously attack, assault and fire at LIZETTE ORTIZ, with an armalite rifle, thereby inflicting upon the latter, penetrating gunshot wound in her abdomen, which wound would have caused or led to the death of the said LIZETTE ORTIZ, were it not for the timely and able medical assistance extended to her, thus performing all the acts of execution which should have produced the crime of Murder as a consequence, but nevertheless did not produce it by reason of causes independent of the will of the accused, that is, by the timely medical assistance rendered to said LIZETTE ORTIZ, which prevented her death.

"ALL CONTRARY TO LAW, and with the aggravating circumstances of nighttime and use of motor vehicle."<sup>[4]</sup>

Criminal Case No. 8528-R

"The undersigned accuses ROMEO DIANOS and `JOHN DOE' of the crime of MURDER, committed as follows:

"That on or about the 31st day of December, 1990, in the City of Baguio, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill and with treachery and evident premeditation, conspiring, confederating and mutually aiding with each other, did then and there wilfully, unlawfully and feloniously attack, assault and fire at RICARDO PABLO y PALUA, with an armalite rifle, causing upon the latter, hypovolemic shock secondary to massive hemorrhage due to penetrating wounds of the heart, lungs, aorta and pulmonary vessels due to multiple gunshot wounds on the chest, which directly caused his death.

"ALL CONTRARY TO LAW, and with the aggravating circumstances of nighttime and use of motor vehicle."<sup>[5]</sup>

At his arraignment, accused Dianos entered a plea of not guilty to all the charges. His co-accused remained at large.

The witnesses for the prosecution came up during the trial with accounts of the incidents brought up in the various accusations.

Involved in the unfortunate saga were all residents of Cypress Point Village, Irisan, in Baguio City. The otherwise friendly relationship among them was marred by a transaction apparently gone awry between Teresita Ortiz (Teresita) and Josie Ortiz Santos (Josie), on the one hand, and accused Romeo Dianos, on the other hand, over a piece of land occupied by the latter. The ensuing "bad blood" led to the fatal denouement.

On 31 December 1990, at about five o'clock in the morning, Nancy Ortiz Dasudas (Nancy) saw the accused throw a hand grenade near the house of her parents. Josie, who was standing near the site of the explosion was hit with a shrapnel on the left leg. A grenade pin and several shrapnels were recovered from the scene.

Later that day, at around 9:30 in the evening, the accused, donned in military camouflage uniform and armed with an M-16 armalite rifle, was seen traversing the Cypress Point Road. Following closely behind was his passenger jeepney with three unidentified men on board.

Meanwhile, that same evening, Teresita, together with her husband, Virgilio Ortiz (Virgilio), her daughter, Corazon Ortiz Ihanda (Corazon), her brother, Ricardo Pablo (Ricardo), and her son, Zaldy Ortiz (Zaldy), were on the terrace of their new house waiting for the other Ortiz children to arrive in time for the New Year's eve celebration. The three men, Virgilio, Ricardo and Zaldy, momentarily left the terrace, Virgilio to relieve himself by the side of the house, Zaldy to repair home and Ricardo to go to the house of Nancy Ortiz Dasudas (Nancy) across the street. Ricardo met the accused near the waiting shed. Without any warning, the latter suddenly struck Ricardo on the face with the butt of an armalite causing him to fall to the ground. The accused then fired at Ricardo, hitting him on the chest and left arm. The accused then directed his armalite at Virgilio. The latter was hit on the buttocks. The accused thereupon fired indiscriminately at the house of Zaldy. Zaldy received a

bullet injury in his right thigh, while his daughter, Lizette Ortiz (Lizette), was hit in her abdomen and wrist. The accused moved towards the direction of the new house and fired at the terrace. Teresita took a bullet wound on the neck from the volley of shots, while Corazon escaped unscathed.

The accused, right after the shooting, boarded his jeep and sped towards Baguio City.

In the aftermath, two were found dead, namely, Teresita and Ricardo, while three others, Virgilio, Zaldy and Lizette, sustained injuries. The latter were all rushed to the Baguio General Hospital where they were treated for gunshot wounds.

P/Sgt. Albert Gaydownen of Sub-station 1, upon receiving the report on the incident, immediately dispatched Pat. Ruben Forte (Pat. Forte), Pfc. Marianito Cosape (Pfc. Cosape) and Pat. Robert Credo (Pat. Credo) to the crime scene. Pfc. Cosape was able to gather several pieces of spent cartridges from the waiting shed and surrounding areas. At the police station, Sgt. Danilo Santos (Josie's husband) who tagged along with the investigating team from the crime scene, requested P/Sgt. Gaydownen to contact Camp Bado Dangwa to intercept the passenger jeepney of the accused. P/Sgt. Gaydownen was yet searching for the telephone number of Camp Dangwa when the accused's jeepney was seen near the sub-station coming in from Baguio City. It was promptly met with a burst of gunfire. Somehow, the accused was able to escape.

Meanwhile, Zaldy and Virgilio were discharged from the hospital shortly after treatment. Having sustained lacerations on her liver and large intestines, as well as multiple pilferages on her small intestines, Lizette had to be confined. The doctors who attended to her testified that the gunshot wounds she had sustained were serious enough to cause her death had it not been for the immediate surgical and medical attention given to her. She also sustained a fractured wrist which would leave her left hand permanently disabled. She was treated for a total of thirty-three days in the hospital.

The *post mortem* report on the bodies of Teresita and Ricardo readily disclosed that their death were due to the gunshot wounds they had sustained. Teresita had gunshot wounds on her neck and right side of the face that caused an acute respiratory failure. Ricardo sustained gunshot wounds on his left chest and left upper arm. He died from hypovolemic shock secondary to massive hemorrhage due to penetrating wounds in the heart, lungs, aorta and pulmonary vessels.

Anent the damages incurred by private complainants: Virgilio testified that he had spent P1,000 for medications for his thigh injury. A riprap contractor, he was not able to work for seven months depriving him of his monthly income of P2,000 for the period or the total amount of P14,000. He asserted that he had incurred P110,000.00 for funeral services for his wife Teresita. Nenita Pablo (Nenita) said in her testimony that she had spent P15,000.00 for the autopsy and coffin of Ricardo, P3,000.00, by way of doctor's fee and P8,000.00 for the wake. Zaldy testified that he had spent P500 for the treatment of his injury.

The accused proffered the jaded *apologia* of denial. He disclaimed any knowledge of, or participation in, the grenade throwing and shooting incidents. He recounted that while he was getting his passenger jeepney out from the carport, an unidentified

man poked a gun at his back and instructed him to proceed to Cypress Point Road to fetch a companion. When they were near the waiting shed area, he saw the unidentified man's companion, a "military man," clad in military camouflage uniform and armed with an M-16 armalite rifle, altercation with Ricardo. Moments later, he saw the gun-wielding man shoot Ricardo and spray bullets at Zaldy's house and the "new" house before boarding the passenger jeepney. The accused was ordered to proceed to La Trinidad, Benguet, where the "military man" alighted from the vehicle. The other fellow got down from the vehicle in Puliwes Camp 7, Kennon Road. The accused proceeded to Sub-station 1 to report the incident but he was met with a burst of gunfire. Sustaining an injury in his thigh, he then drove to Sub-station 2 to seek police assistance. Sgt. Giovanni Gallardo (Sgt. Gallardo) and Pat. Edward Ayochoch (Pat. Ayochoch) took him to the St. Louis Hospital. On the way, the accused had the chance to narrate to the two police officers the shooting incident in Irisan.

The RTC rendered its decision on 10 May 1994 finding the accused guilty beyond reasonable doubt of the crimes with which he was charged; the trial court adjudged:

"WHEREFORE, Judgment is hereby rendered as follows:

"1. In Criminal case No. 8524-R, the Court finds accused Romeo Dianos Guilty beyond reasonable doubt of Murder defined and penalized under Article 248 of the Revised Penal Code and hereby sentences him to Reclusion Perpetua; to indemnify the heirs of deceased Teresita Ortiz the sum of P50,000.00 for her death and the sum of P110,000.00 as Actual Damages for expenses incurred for the wake, funeral and burial services, both indemnifications being without subsidiary imprisonment in case of insolvency and to pay the costs.

"The accused being a detention prisoner is entitled to a full credit of his preventive imprisonment in the service of his sentence.

"2. In Criminal case No. 8525-R, the Court finds accused Romeo Dianos guilty beyond reasonable doubt of Attempted Murder defined and penalized under Article 248 in relation to Article 6 and Article 51 of the Revised Penal Code and hereby sentences him, applying the Indeterminate Sentence Law, to an imprisonment of 1 Year 7 months and 11 days of prision correccional as Minimum to 6 years, 1 month and 11 days of prision mayor as Maximum, to indemnify Zaldy Ortiz the sum of P 5,000.00 as Moral Damages for the injuries sustained by him without subsidiary imprisonment in case of insolvency and to pay the costs.

"The accused being a detention prisoner is entitled to a full credit of his preventive imprisonment in the service of his sentence.

"3. In Criminal Case No. 8526-R, the Court finds accused Romeo Dianos guilty beyond reasonable doubt of Attempted Murder defined and penalized under Article 248 in relation to Articles 6 and 51 of the Revised Penal Code and hereby sentences him, applying the Indeterminate Sentence Law, to an imprisonment of one year, 7 months and 11 days of prision correccional as Minimum to 6 years, 1 month and 11 days of prision mayor as Maximum, to indemnify Virgilio Ortiz the sum of P1,000.00 as actual damages for the expenses incurred for his medical