

SECOND DIVISION

[G.R. Nos. 112620-21, May 14, 1997]

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
NOLI PAGAL Y LAMQUI AND ADOLFO LAMQUI Y NATIVIDAD,
ACCUSED-APPELLANTS.
D E C I S I O N**

ROMERO, J.:

Before this Court comes a case replete with all the elements of a blockbuster action movie: Violence, motives and alibis. The law in dispensing justice is, however, constrained to detach itself from sensationalism and, instead, look at the facts dispassionately as presented and proven in a court of law.

This is an appeal from the decision dated September 23, 1993, of the Regional Trial Court (RTC) of Tayug, Pangasinan, Branch 51, convicting accused Noli Pagal and Adolfo "Boy" Lamqui of the crimes of murder and attempted murder and sentencing them to *reclusion perpetua* and imprisonment of two years, ten months and twenty days of *prision correccional*, as minimum, to eight years and twenty days of *prision mayor*, as maximum, respectively.

The two cases were initially filed before the RTC of Lingayen as Criminal Case No. L-4253, for murder, and Criminal Case No. L-4252 for frustrated murder. Upon motion of the prosecution, the cases were later transferred to the Tayug RTC and respectively re-docketed as Criminal Case Nos. T-1086 and 1061.

The relevant facts gathered from the records follow:

Paquito Medrano and Jose Rebujo were partners in the business of buying and selling cattle. On March 23, 1990, between the hours of nine and ten in the morning, they decided to go to Cabuaan, Natividad, Pangasinan to look at a cow that was up for sale. Medrano drove a motorcycle with Rebujo riding tandem. They, however, never reached their destination as they were ambushed along the way. Somewhere between Barangay San Miguel and Sitio Tulin of said town, they noticed two bamboo poles obstructing the road some three (3) meters ahead of them. As they were slowing down, they both noticed, crouched in the canal on the left side of the road, two men who stood up silently, one after the other, and without a word started firing at them with an armalite rifle and a short firearm. They later identified the malefactors as Noli Pagal and Adolfo "Boy" Lamqui. Despite the injuries sustained from the firing, Medrano was able to drive faster and proceed to the hospital while his companion hung on.

As evidenced by two medical certificates both dated March 27, 1990, and reiterated on the witness stand by the attending physician, Dr. Cesar Bulosan, Medrano and Rebujo were confined and treated at the Eastern Pangasinan District Hospital. Dr. Bulosan treated Medrano for gunshot wounds on the left upper abdomen, right

upper abdomen, left chest below the nipple and on the right arm near the wrist and Rebujo for a through-and-through gunshot wound at the left thigh, and gunshot wounds at the right buttock below the waistline, right forearm and back of the upper right forearm. After considering the nature and the appearance of the wounds at the time of the examination, he opined that an automatic rifle could have been used and such must have been fired at close range because of the presence of multiple powder burns.^[1]

Rebujo was subsequently transferred to the Armed Forces of the Philippines Medical Center (AFPMC) where he died on March 25, 1990. The cause of his death was cardiorespiratory arrest due to massive internal hemorrhage resulting from the through-and-through gunshot wound at the left thigh, as stated in the medico-legal report^[2] issued by Dr. Perfecto Tebangin, the Municipal Health Officer of Natividad, Pangasinan.

Upon learning of the incident at around 10:30 in the morning of the fateful day, prosecution witness Patrolman Orlando Arciaga immediately proceeded to the Eastern Pangasinan District Hospital and was able to interview the victims who divulged the identities of their assailants, namely, Noli Pagal and Boy Lamqui.^[3] Said investigation was taken down in writing and was presented in evidence as the ante-mortem statement of Rebujo.

Medrano took the stand and positively identified the assailants, corroborating the statement of the late Rebujo.^[4] He knew the assailants well because Pagal is his nephew, and he, Rebujo and the Pagals have been partners in the business of buying and selling cattle since their childhood.^[5] Their cordial relationship deteriorated after a slaying incident in 1988 involving the members of the Medrano and Pagal families.^[6] Although, the matter was amicably settled within the same year, the relationship between the Medrano and Pagal family has since been strained.

Accused-appellants interposed the defense of denial and alibi. They declared that from eight to eleven in the morning of March 23, 1990, they were in Barangay Calapugan, helping in the construction of a certain Hermenegildo Pate's house. They stressed that they never left said site until they were called by Pagal's brother at eleven o'clock a.m. because members of the Philippine Constabulary were looking for them.^[7] To corroborate their story, they presented Jun de Guzman, one of the workers in the construction site, and Pagal's father Arturo.

After trial, Judge Ulysses R. Butuyan rendered a decision dated September 23, 1993, finding accused-appellants guilty of murder and attempted murder. The dispositive portion thereof states, thus:

"WHEREFORE, in Criminal Case No. T-1061, the Court finds the accused NOLI PAGAL y Lamqui and the accused ADOLFO LAMQUI y Natividad alias "Boy" guilty beyond reasonable doubt of the crime of Attempted Murder, defined and penalized under Article 248 of the Revised Penal Code in relation to the third paragraph of Article 6 of the same Code, as co-principals, and hereby sentences them to each suffer the penalty of imprisonment of Two (2) years, Ten (10) months and Twenty (20) days of

prision correccional as minimum to Eight (8) years and Twenty (20) days of prision mayor as maximum, together with the accessory penalties provided by law, and to solidarily indemnify the private complainant Paquito Medrano or his heirs, in a proper case, for actual damages in the amount of P8,000.00 plus moral damages which the Court hereby fixes at P100,000.00 and to pay the costs.

In Criminal Case No. T-1086, the Court finds the aforementioned accused guilty beyond reasonable doubt of the crime of Murder, defined and penalized under Article 248 of the Revised Penal Code, as co-principals, and hereby sentences them to each suffer the penalty of reclusion perpetua, together with the accessory penalties provided by law, and to solidarily indemnify the heirs of the late Jose Rebujo for actual damages of P61,200.00 plus moral damages which the Court hereby fixes at P300,000.00 and to pay the costs.

SO ORDERED."^[8]

Aggrieved, accused-appellants come to this Court seeking the reversal of their conviction on the ground that the trial court erred in finding both of them guilty of murder and attempted murder.

We find the appeal bereft of merit.

Accused-appellants argue that at a distance beyond eighteen inches from the barrel of a firearm, it would be impossible for powder burns to be present in the bodies of the victims.

Dr. Bulosan, however, testified that a high caliber firearm like an armalite can leave powder burns on the target although situated eighteen inches away.^[9] It is specious reasoning for accused-appellants to conclude that it is impossible for powder burns to be present in the bodies of victims shot from a distance beyond eighteen inches considering the undisputed fact that it was an armalite rifle which was used in the commission of the crimes.

Next, they contend that the results of the paraffin test show that they are innocent of the crimes for which they were charged. This Court agrees with the court a quo in not giving much weight to the National Bureau of Investigation (NBI) Chemistry Report finding Lamqui negative for powder burns and Pagal positive for powder burns only on his palm.^[10] Well-settled is the rule that a negative finding on paraffin test is not a conclusive proof that one has not fired a gun,^[11] because it is possible for a person to fire a gun and yet bear no traces of nitrates or gunpowder, as when the hands are bathed in perspiration or washed afterwards.^[12] The trial court also correctly rejected the results of said exam for having been taken eighteen days after the commission of the crime.^[13]

Accused-appellants likewise fault the lower court for lending credence to the testimony of Medrano. They aver that his testimony that the gunmen were at the right side of the victims is belied by the gunshot wounds located in front of the bodies of the victims, indicating a face-to-face encounter.^[14] Medrano, however, testified that accused-appellants were already firing at him and Rebujo from a