

## FIRST DIVISION

[ G.R. Nos. 94376-77, July 11, 1996 ]

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
ELMER BELGA Y OPINION, DEFENDANT-APPELLANT.**

### D E C I S I O N

**HERMOSISIMA, JR., J.:**

Two separate Informations, one for Murder and the other for Frustrated Murder, were filed against appellant Elmer Belga y Opinion with the Regional Trial Court, National Capital Judicial Region, Branch XLIX, Manila, on July 14, 1987, docketed as Criminal Cases Nos. 87-55982 and 87-55983, respectively.

The Information in Criminal Case No. 87-55982 (Murder) reads:

*"That on or about May 21, 1984, in the City of Manila, Philippines, the said accused conspiring and confederating with ROBERTO OLAZO y FAJARDO, also charged with the same offense before RTC, Manila docketed as Criminal Case No. 84-27552 and with Pat. Noel Palada y Santos, charged with the same offense before the JAGO, together with the others whose true names, identities and present whereabouts are still unknown and mutually helping one another, with intent to kill and with treachery and evident premeditation, did then and there wilfully, unlawfully and feloniously attack, assault and use personal violence upon the person of ARLENE ROSE LORENZANA DE ALBERTO, by then and there shooting her with a firearm, hitting her at the left chest, thereby inflicting upon her mortal and fatal gunshot wound which was the direct and immediate cause of her death.*

*Contrary to law."*<sup>[1]</sup>

On the other hand, the following Information in Criminal Case No. 87-55983 (Frustrated Murder) was also filed against him:

*"That on or about May 21, 1984, in the City of Manila, Philippines, the said accused, conspiring and confederating with Roberto Olazo y Fajardo, already charged with the same offense under Criminal Case No. 84-27753, RTC, Manila, Pat. Noel Palada y Santos, also charged with the same offense before the JAGO, together with others whose true names identities and present whereabouts are still unknown and helping one another, with intent to kill and with treachery and evident premeditation, did then and there wilfully, unlawfully and feloniously attack, assault and use personal violence upon the person of Raymundo Roque y Lubigan, by then and there shooting him with a firearm hitting him at the left side of his back and boxing him on the face thereby inflicting upon the latter physical injuries which are necessarily fatal and mortal 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 their will, that is, by the timely and able medical assistance rendered to said Raymundo Roque Lubigan which saved his life.*

*Contrary to law."*<sup>[2]</sup>

Upon arraignment, appellant, with the assistance of counsel, pleaded not guilty. These two related criminal cases were consolidated and tried jointly. After trial, the court *a quo* rendered judgment of conviction on November 11, 1987, the dispositive portion of which reads:

*"WHEREFORE, judgment is hereby rendered finding the accused Elmer Belga y Opinion guilty beyond reasonable doubt as principal for the crimes of Murder and Frustrated Murder and hereby sentences him to the following penalties:*

*(a) In Criminal Case No. 55982-SCC (for Murder), the Accused is hereby sentenced to reclusion perpetua, with all the accessory penalties of the law, and to pay the heirs of Arlene Rose Alberto, the amount of P30,035.00 as actual damages and P30,000.00 as moral and exemplary damages, without subsidiary imprisonment in case of insolvency;*

*(b) In Criminal Case No. 55983-SCC (for Frustrated Murder), the accused is hereby sentenced to suffer imprisonment for a period of twelve (12) years, five (5) months and eleven (11) days as minimum to fourteen (14) years, ten (10) months and twenty (20) days of reclusion temporal as maximum, and to pay to Raymundo Roque the amount of P20,000.00 as damages, without subsidiary imprisonment in case of insolvency.*

*The accused is hereby declared credited to the full period of his detention provided that the agreed in writing to abide by and comply strictly with the rules and requisitions of the City Jail and of detention center in Camp Crame, Quezon City.*

*The accused is hereby ordered to pay the costs in both cases."*<sup>[3]</sup>

Hence, this appeal assigning the following errors:

## I

THE TRIAL COURT ERRED IN CONCLUDING THAT, ALL TOLD, THE EVIDENCE PRESENTED BY THE PROSECUTION IN THE CASE HAD PROVED THE GUILT OF THE ACCUSED-APPELLANT BE - (SIC).

## II

THE TRIAL COURT ERRED IN FINDING THAT, ASSUMING THE PARTICIPATION OF THE ACCUSED-APPELLANT IN SAID CRIMINAL ACTS, HE WAS GUILTY OF MURDER AND OF FRUSTRATED MURDER THEREFOR.<sup>[4]</sup>

As culled from the records, the following facts appears to have been established by the prosecution:

After their marriage sometime in 1982, Glicerio Alberto, one of the private complainants, and the deceased Arlene Rose Lorenzana Alberto settled down in a two-storey house, situated in a compound with address at No. 903-B Apacible Street, Paco, Manila. The ground floor of the house has three (3) rooms, all rented out and occupied. It has a common sala and a kitchen with one main door leading to the common sala. Each of the three rooms has its own door.

One of the rooms was occupied by the spouses Glicerio and Arlene Rose. The second room was rented by the other private complainant Raymundo Roque, together with another couple, Lamberto Ariza and Cristina Ariza. Raymundo Roque was, at that time, a fourth year student of Civil Engineering. The third room was then being leased by Elisa Dungca Nava, mother of Lorenzo "Boy" Nava and Allan Nava, close friends of herein appellant, Elmer Belga.

Relations between Eliza Nava and the spouses Alberto and Arlene Rose soured when the latter filed a complaint<sup>[5]</sup> against Mrs. Nava with the now defunct City Court of Manila. The complaint was brought about when, on one occasion, Arlene Rose discovered that one of her utensils which she used to place in the kitchen was found in the possession of Eliza Nava. A quarrel ensued and this led to the filing of said complaint against Mrs. Nava. Thereafter, Mrs. Nava vacated her room and, in her stead, her two children, Boy Nava and Allan Nava, occupied it. The Nava brothers seldom used the room because they could not pay the rent. Often, they stayed in Sta. Mesa.

Sometime in March, 1994, while on their way home from the trial of their case against Mrs. Nava, the Alberto spouses were confronted by Eliza Nava. She ominously warned Arlene Rose: "Kung hindi mo iurong ang demanda mo sa akin ipapapatay kita sa anak kong killer na si Boy (Nava) bago dumating ang susunod na hearing."<sup>[6]</sup> Continuation of the trial of their case was set on May 25, 1984, at 2:00 o'clock in the afternoon.

Apparently unperturbed, the Alberto spouses simply ignored her.

On May 21, 1984, or four (4) days before the next scheduled trial, at about 8:30 in the evening, while Glicerio and Arlene Rose were watching television in their room, together with their two young children, aged one (1) year and two (2) years respectively, Glicerio noticed four (4) or five (5) persons entering the compound, the gate having been open at that time. In the group were Boy Nava and the appellant.

The group entered the door leading to the sala. Thereafter, Glicerio noticed that the lights in the sala which were on at that time were switched off. Glicerio went out of their room and proceeded to the sala to find out who turned off the lights and, once in the sala, he switched on the lights again. Suddenly, Glicerio was hit by someone. As instinct would dictate, Glicerio hit back. An exchange of blows ensued. At this moment, Arlene Rose went out of their room and pulled her husband out of the fracas and brought him inside their room. In the process, Arlene Rose must have closed violently the door to their room.

Disturbed by the commotion in the sala, Raymundo Roque, occupant of the second room, went out to see for himself what it was all about. As he came out of his room, he was boxed on the left eye by Boy Nava. Raymundo Roque fell. The accused pointed his gun at Roque, but before he could fire a shot, Roque stood up and hit back at Boy Nava. An exchange of blows once again ensued, this time between Raymundo Roque and the companions of the accused. Realizing that he was outnumbered, Roque ran to the kitchen to look for some weapons to defend himself with. He took hold of a chair and an empty bottle. Roque hit Boy Nava with the chair. He hit another companion of Boy Nava with the bottle. As Raymundo Roque stepped back and lifted the chair to defend himself from a renewed onslaught of Boy Nava, appellant Elmer Belga, who was to the left of Roque, shot the latter who was hit at the back, left side of his body. The bullet exited from the left portion of his chest, just above the nipple but near the armpit. Appellant Elmer Belga shot him the second time, but missed.

Incidentally, Raymundo Roque was likewise not in good terms with the Navas, since Roque and his cousin had a previous quarrel with Allan Nava, the brother of Boy. On the face of it, there was no love lost between Raymundo Roque and his attackers.

While this altercation was going on, Glicerio Alberto had been trying to go into the sala again but Arlene Rose refused to let him go. She placed herself behind the door to their room in order to block the way of her husband. They grappled for the doorknob, but Glicerio Alberto was able to put his hand on the edge of the door, as a consequence of which, the door was opened about a foot wide. This gave Glicerio a clear view of a portion of the sala from their room.

While the couple were struggling for the door, and after the appellant had shot Raymundo Roque twice, the assailants scampered towards the main door. It was the appellant who ran to the door last. As he was running towards the main door, he saw the door to the room of Glicerio and Arlene Rose open and moving. He instinctively pointed his gun at the open door and fired. The bullet pierced the door and hit Arlene Rose on the left side of her chest just below the armpit. Glicerio Alberto looked out to the sala from where the gunshot emanated and saw the appellant holding a gun running towards the main door. Of the five persons who entered the house, only appellant Elmer Belga had carried a gun.

Immediately thereafter, Glicerio Alberto, with the help of some relatives, secured a motor vehicle to bring the bloodied and unconscious Arlene Rose to the hospital. At about the same time, Raymundo Roque ran out of the house to look for a vehicle he could use in going to a hospital. When he saw Glicerio Alberto and Arlene Rose with some relatives inside a vehicle, he boarded the same and went with the couple to the Philippine General Hospital (PGH) in Manila.

At the PGH, Arlene Rose died at about 9:25 that same evening. Raymundo Roque was given medical treatment and operated on. Luckily, he survived.

The Autopsy Report with respect to the body of the deceased Arlene Rose Alberto reveals the following:

#### "POSTMORTEM FINDINGS

*Pallor, marked, generalized.*

*Contusions: thigh, left, middle third, antero-lateral aspect, 10.0 x 7.0 cm; leg, left, upper third, anterior aspect, 2.0 x 1.5 cm.*

*Wound, gun shot, entrance, oval, edges inverted, 0.9 x 1.0 cm. in size including a contusion collar widest (0.1 cm) at its infero-lateral border, located at the chest, left side, 20.0 cm from the anterior median line, 107.0 cm above the left heel, directed slightly forward, slightly upward and from left to right, involving the skin and underlying soft tissues, penetrating the 7th left interspace and grazing the lower border of the 7th rib, perforating the lower lobe of the left lung, the left and right ventricles of the heart and the lower lobe of the right lung, fracturing the 6th right rib, making an exit, roughly oval in shape, edges everted, 1.4 x 1.8 cm in size, located at the chest, right side, 16.5 cm from the anterior median line, 108.5 cm. above the right heel.*

*Hemothorax, left, about 500 c.c., and right, about 400 c.c.*

*Heart chambers contain a small amount of dark fluid blood.*

*Other visceral organs, pale.*

*Stomach, almost full of partially digested rice and other food particles.*

*CAUSE OF DEATH: Hemorrhage, severe, secondary to gunshot wound of the chest.*<sup>[7]</sup>

The Medico-Legal Certificate with regard to the injuries sustained by Raymundo Roque stated:

*"Gunshot wound through and through,  
Entry: (L) lateral scapular area;  
Exit: (L) antero-lateral chest wall."*<sup>[8]</sup>

Were it not for the timely and adequate medical treatment administered to Raymundo Roque by Dr. Felixberto Pelayo, he would have died from the gunshot wound he sustained.<sup>[9]</sup>

Appellant relies on denial for his defense. As patiently summarized by the court a quo, appellant avers that:

*"On May 21, 1984, in the afternoon, the Accused was in the store of his girlfriend. Pat. Noel Palada arrived and invited the Accused to celebrate the birthday of the former and have a drinking spree. The accused agreed. The two policemen thereupon proceeded to the Native Restaurant at Otis Street, Mendiola Extension, Paco, Manila, and arrived thereat at about 5:00 o'clock that afternoon. Aside from the Accused and Pat. Noel Palada, the Nava brothers, Roberto Olazo and William Payumo and other friends of the Nava brothers were in attendance. Pat. Noel Palada brought along with him his revolver with Serial Number 769675. The group partook of the many bottles of beer and food offered by the*