

SECOND DIVISION

[G.R. No. 117950, October 09, 1996]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ARADAM DE MANUEL, ACCUSED-APPELLANT.**

DE C I S I O N

REGALADO, J.:

In an amended information^[1] filed on June 15, 1992 and docketed as Criminal Case No. 3514 in the Regional Trial Court, Branch 5, Kalibo, Aklan, accused-appellant Aradam de Manuel was charged with murder allegedly committed as follows:

"That on or about the 6th day of January, 1992, in the early morning, in Poblacion, Municipality of Lezo, Province of Aklan, Republic of the Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with treachery and evident premeditation, without just motive, while armed with a handgun and with intent to kill, did then and there, willfully, unlawfully and feloniously, attack, assault and shoot one JOSEPH INLUCIDO, thereby inflicting upon the latter mortal wound, to wit:

'FINDINGS:

Tracheal laceration at lower posterior portion. Laceration of upper portion of descending aorta. Thru and thru laceration of superior lobe of left lung. Fracture of left 6th lateral rib. Approximately one (1) liter of clotted blood in the left pleural cavity.

CAUSE OF DEATH:

Hypovolemic Shock
Secondary to Massive Hemorrhage
Secondary to Gunshot Wound'

as per Post Mortem Examination Findings of Victor A. Santamaria, M.D., Medical Officer IV, Dr. Rafael S. Tumbokon Memorial Hospital, Kalibo, Aklan, hereto attached as Annex 'A' to form part of this information which wound directly caused the death of the said JOSEPH INLUCIDO.

That as a result of the criminal acts of the accused, the heirs of the deceased JOSEPH INLUCIDO suffered actual and compensatory damages in the amount of FIFTY THOUSAND PESOS (P50,000.00).

CONTRARY TO LAW".

Appellant having pleaded not guilty to the charge when arraigned on June 16, 1992, [2] the court below proceeded with the trial of the case. Testifying as prosecution witnesses were Chief Inspector Delbe Olano, PO3 Andie Delgado, Dr. Victor Santamaria and SPO1 Oscar Angeles. Their testimonies, with the documentary evidence adduced therein, presented the case for the prosecution which, as culled from the decision [3] of the court *a quo*, narrated the antecedents as summarized hereunder.

At about 10:30 P.M. on January 5, 1992 at Camp Martelino, Kalibo, Aklan, the victim Joseph Inlucido and Andie Delgado, both PNP members, were given instructions by their commanding officer, Chief Inspector Delbe Olano, to proceed to the compound of Aklan Electric Cooperative (AKELCO) to gather information and verify reports of the presence of armed men. Earlier that same evening, four other PNP members, namely, SPO1 Oscar Angeles, SPO1 Arman David, PO2 Erasmo Galgado and PO2 Roger Inson had arrived in the AKELCO compound aboard a PNP patrol car which they parked in front of the gate thereof beside the road. The PNP officers were there because of the report of then Mayor Erna Besana about the same armed men.

At about a little past midnight, Inlucido and his companion, Delgado, both armed with handguns tucked in their waists, arrived in the vicinity of the compound riding in tandem on a motorcycle driven by the victim. A few meters after passing the gate, they made a U-turn towards Numancia, Aklan. Herein appellant who had gone out of the pedestrian gate of AKELCO, shouted at them, saying that they were spies of Col. Oliquino, the then PNP Provincial Director of Aklan. Immediately thereafter, he fired his gun, hitting Inlucido. At that moment, appellant was about one meter from Inlucido and Delgado and about four meters from the patrol car of the policemen from Lezo, Aklan.

SPO1 Angeles was inside the patrol car, being the driver thereof, when appellant fired his gun at Inlucido and Delgado. The motorcycle fell on its left side pinning down the driver and his backrider who found himself under the body of Inlucido, but the latter was able to get up. Angeles immediately got out of the patrol car and wrestled with appellant for possession of the gun. In the course of their struggle which caused injury to the left hand of Angeles, the gun fell to the ground and was picked up by PO2 Galgado. Appellant then ran into the compound of AKELCO. The PNP members and Delgado brought the victim to the hospital in their patrol car, but he was declared dead on arrival. Dr. Victor Santamaria conducted the autopsy and submitted the post mortem examination report. [4]

In the meantime, Delgado went back to Camp Martelino to inform his commanding officer about the incident. Delgado and Capt. Olano thereafter informed Major Vasquez, the Deputy PNP Provincial Director, and then they proceeded to the AKELCO compound to conduct an investigation. Capt. Olano summoned the policemen present during the commission of the crime and he was told that appellant Aradam de Manuel was the one who shot Joseph Inlucido. [5] He instructed the group of Angeles to look for and apprehend appellant. Eventually, appellant was arrested in his house in the morning of January 6, 1992, and was turned over to the station commander, Capt. Rey Tang. The gun [6] which was wrested from him by Angeles was likewise turned over, together with one empty shell [7] and one live bullet, [8] after Angeles had made identifying marks thereon.

The victim, Inlucido, and his companion were in civilian clothes at the time of the incident as they were assigned to the intelligence unit of the 312th PNP company. The shooting incident happened so fast such that both Inlucido and Delgado were not even able to draw sidearms when they were fired at. The hands of the victim Inlucido were on the steering bars of the motorcycle while Delgado was balancing himself on the rear seat.^[9]

The evidence for the defense consisted of the testimonies of Ricardo I. Iletto, Rey Inson, Oscar Isidro, appellant himself, and some documents identified as Exhibits 1 to 4-B. In the case of appellant, he offered a different version which follows in a synthesized form.

He claimed that at about midnight of January 5, 1992, he was in the administration building together with Engr. Iletto and other employees of the AKELCO, when they heard gunfire coming from the direction of the main gate. They ran towards the gate to verify what happened. As soon as appellant stepped out of the pedestrian gate, SPO1 Angeles pointed his armalite rifle at him, telling him to put his gun, which was tucked at his waist, on the ground and to go back inside the compound. He heeded the command of Angeles who then picked up the handgun. Engr. Iletto was with appellant inside the compound near the pedestrian gate when they saw a man pinned down by a motorcycle on the middle of the road. They saw another man in civilian clothes on that road, raising his arms and saying that he was a PNP member. Appellant then went inside the compound and, together with Iletto, proceeded to the administration building.

At around 1:30 A.M. on January 6, 1992, he went to the manager's residence to sleep. After 30 minutes, Major Vasquez and some PNP members from Camp Martelino arrived aboard several trucks in the AKELCO compound. They ordered the participants of the protest-rally to fall in line in front of the administrative building. Major Vasquez asked the participants to state who among them were former military men. One Rexel Briones answered that he was, by raising his hands. A certain PNP member pointed at Rexel Briones as the one who shot the victim, which PNP member appellant allegedly recognized later as Delgado. About 23 participants/protestees were brought to Camp Martelino for investigation and were later released. Appellant woke up at around 5:30 A.M., and was informed of the arrest of the employees who kept vigil during the protest-rally. He went home to change clothes afterwards, he was arrested by the group of Angeles.^[10]

It turned out that during the incident, the group of Angeles had no knowledge that the victim, Inlucido, and his companion, Delgado, were members of the PNP. Appellant and Angeles were townmates and they knew each other very well. They had cordial relations with each other which they maintained even up to the time appellant testified in court. The victim and appellant did not know each other.^[11]

On the strength of the evidence presented by the prosecution, the lower court concluded that it was appellant De Manuel who shot and killed Inlucido, and it consequently rendered the following judgment:

"WHEREFORE, after a meticulous and careful evaluation of the evidence on record, this court is convinced, and so holds, that the accused Aradam

de Manuel is guilty beyond reasonable doubt, as principal, of the crime of murder as defined and penalized in Article 248 of the Revised Penal Code and hereby imposes upon him the penalty of RECLUSION PERPETUA. The said accused is also ordered to pay to the legal heirs of Joseph Inlucido the amount of Fifty Thousand (P50,000.00) Pesos as death indemnity, with costs against the accused.^[12]

Hence, this appeal, with appellant faulting the trial court as having erred (1) in finding that the killing of Joseph Inlucido was attended by treachery; (2) in disregarding material testimonial and physical evidence from the testimony of Dr. Victor A. Santamaria; and (3) in not acquitting herein appellant.^[13]

On the first assigned error, appellant challenges the finding of the court below that the killing of Joseph Inlucido was attended by treachery. The contention is palpably devoid of merit since, as correctly observed by the People, the victim was totally unsuspecting when appellant fired at him as he was about to again pass the main gate.^[14] Indeed, the evidence shows that, firstly, at the time of the attack the victim was not in a position to defend himself; and, secondly, the offender consciously and deliberately adopted the particular means, methods or forms of the attack employed by him.

When the victim, Inlucido, and his companion, Delgado, were shot by appellant, the hands of the victim were holding the steering bars of the motorcycle and his companion was out of balance. There was no chance for them to evade the attack, defend themselves or, much less, to retaliate. As testified by prosecution witness Andie Delgado:

"Q Was the motorcycle you were riding driven by Joseph Inlucido still moving when you were fired at?

A Moving slowly.

Q And who was driving that motorcycle?

A Joseph Inlucido.

Q At the time you were fired at have you noticed where the hands of Joseph Inlucido were?

A It was in the steering wheel.

Q Steering wheel of what?

A The steering wheel of the motorcycle.

Q What about you, where were you in relation to Joseph Inlucido at the time you were fired at?

A I was at the back of Joseph Inlucido.^[15]

x x x

Q You said that Joseph Inlucido was armed at the time, was he able to draw his gun?

A No, because he was handling the steering wheel of the motorcycle.

Q What about you, you said you were armed, were you able to draw your firearms?

A No, because I was out-balanced.

Q Was there a time where you can draw your firearms before you were fired at?