

**[ CA-G.R. CEB CR-HC NO. 01292, March 31, 2014 ]**

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
ALLAN MARCELLA, ACCUSED- APPELLANT.**

**D E C I S I O N**

**LAGURA-YAP, J.:**

Allan Marcella appeals<sup>[1]</sup> the November 3, 2010 Joint Decision<sup>[2]</sup> of the Regional Trial Court (RTC), Branch 59, San Carlos City, Negros Occidental, convicting him of murder in Criminal Case No. RTC-1786. The dispositive portion of the decision reads:

"WHEREFORE, in view of the foregoing the Court hereby renders judgment:

1. In Criminal Case No. RTC-1786, finding accused ALLAN MARCELLA "GUILTY" beyond reasonable doubt for the crime of Murder qualified by evident premeditation as defined and penalized under Article 248 of the Revised Penal Code and taking into consideration the presence of the aggravating circumstance of treachery and Republic Act No. 9346 which prohibits the imposition of the Death Penalty and applicable jurisprudence, hereby imposes upon him the penalty of *Reclusion Perpetua* without the possibility of parole and with the accessory penalties for Death.

He is likewise ordered to pay the heirs of Francisco Beatingo, Sr. the following amounts:

1.1 **Seventy Five Thousand (P75,000.00) Pesos** as indemnity for death.

1.2 **Fifty Thousand (P50,000.00) Pesos** as moral damages and

1.3 Cost of suit.

It appearing that accused Allan Marcella is a detention prisoner, he is given full credit for the period of his detention provided that he has complied with the rules and regulations of the place where he is presently detained.

In Criminal Case No. RTC-1787, finding accused ALLAN MARCELLA "NOT GUILTY" due to insufficiency of evidence.

The Jail Warden, Escalante City Jail is directed to immediately RELEASE the accused from detention only insofar as this case is concerned and unless held for some other lawful cause or causes.

Lastly, it appearing that accused Roger Pabon is still at large, let a Warrant of Arrest immediately issue against him. Let these cases be sent to the files, there to remain until he is apprehended and brought to court.

SO ORDERED."

### **ANTECEDENTS**

On January 20, 1999, Allan Marcella (accused-appellant) and a certain Roger Pabon were charged of Murder. The accusatory portion of the Information docketed under Criminal Case No. RTC-1786 states:

"That on or about the 28th day of November, 1995, in the Municipality of Escalante, Province of Negros Occidental, Philippines, and within the jurisdiction of this Honorable Court, the first above-named accused, in company of his co-accused, who is still at large, armed with guns, conspiring and confederating and helping each other, with evident premeditation and treachery and with intent to kill, did then and there, willfully, unlawfully and feloniously attack, assault and shoot one FRANCISCO BEATINGO, SR., thereby inflicting a gunshot wound upon the body of the latter which caused his death.

CONTRARY TO LAW."

The case was revived after the accused-appellant was arrested on November 3, 1998<sup>[3]</sup>. He entered a plea of "NOT GUILTY" during the arraignment on February 25, 1999<sup>[4]</sup>.

#### *Evidence for the Prosecution*<sup>[5]</sup>

The prosecution presented Jessiebel Ausa, Anabella Lumacao, Dr. Elena Yap and Francisco Beatingco, Jr., whose testimonies can be summed up as follows, to wit: Jessiebel Ausa is the daughter of victim Francisco Beatingo Sr. and sister of victim Francisco Beatingco, Jr. In the evening of November 28, 1995 while she was selling softdrinks in front of the dance hall at Sitio Cagay IV, Brgy. Buenavista, Escalante, she was told by a person to go find her father as there are persons who are planning to kill him. Upon hearing that information, she immediately proceeded to the house of Evangeline Gale where she saw a group of persons surrounding her father. She then saw accused Allan Marcella shoot her father at close range using an improvised shotgun. When her father fell down, her brother Francisco Beatingo, Jr. tried to help him, but he was likewise shot by accused Roger Pabon. After the shooting incident, the two accused together with their companions fled the scene. Her father was brought to the Vicente Gustillo District Hospital where he was declared dead and her brother was brought to the Sagay Foundation Hospital, where he received medical attention. She further testified that the shooting was because of a grudge nursed by the Marcella family against her father as the latter was the one who encouraged the family of her cousin Sonny Santi to file a criminal case against Allan Marcella, who was pointed to as one who killed him. The case was eventually dismissed as a settlement was

reached between the parties.

Anabella Lumacao testified that she is acquainted with accused Marcella as they live in the same barangay. On November 28, 1995 at about 7:30 that evening, she was at the fiesta celebration of Sitio Cagay IV, Brgy. Buenavista when she saw accused Marcella shoot Francisco Beatingo, Sr. at point blank range with an improvised firearm described as a water pipe. She further demonstrated that accused Marcella shot the victim on his right temple by giving the pipe a hard tap which caused it to eject bullet. After the victim was hit, he fell to the ground and his son was also shot by Roger Pabon when he tried to help his father. After the shooting, accused together with their companions ran off bringing their weapons with them. She corroborated the testimony of Jessibel Ausa that to her knowledge, the elder and younger Marcella carried a grudge against the elder Beatingo as they were made to pay a certain sum of money to have a case filed the relatives of the Beatingos against the younger Marcella dismissed.

Dr. Elena Yap testified that: She was the Rural Health Physician of the Municipality of Escalante when the incident happened. As such, she was the one you (sic) performed the Post Mortem Examination on the victim Francisco Beatingo, Sr. She found that the deceased suffered a gunshot wound at the right parietal area of the head about two (2) inches from his ear. She also noticed powder burns around the entrance wound and burnt hair. This fact indicates to her that the shot was fired at close range. She likewise issued the Certificate of Death showing the cause of death as Hemorrhage secondary to gunshot wound.

Lastly, Francisco Beatingo, Jr. testified that: He is acquainted with accused Marcella as they live in the same barangay. In the evening of November 28, 1995, while he was attending the fiesta celebration of Sition Cagay IV, Brgy. Buenavista, a friend approached him and told him to look for his father as there are people planning to kill him. Immediately after hearing that, he went in search of his father and found him under the house of one Evangeline Gale. Upon seeing his father, he bent down and whispered, "Father, let us go home because there are people who are trying to kill you." But when he was already outside and about to straighten up from his bent position, he saw five (5) persons surrounding him. He then saw accused Marcella approached his father with a "sulpak" which he used to shoot his father, hitting him in his head. When his father was hit, he fell to the ground. When he tried to go his father, he was also shot by Roger Pabon, hitting the left side of his stomach. After the shootings, the group run away. He lost consciousness and woke up at the hospital. According to him, he was first brought to the Magdalene Hospital but was transferred to the Foundation Hospital at Lopez, Sagay as the first hospital was not equipped to handle his injuries. It was at the second hospital where he was underwent an operation and was confined for twenty eight (28) days. He likewise identified a Medical Certificate issued by Dr. Roberto R. Ledesma, who was his attending physician. As to the medical expenses, he is not sure as to the total amount as it was his sister who spent for his hospital expenses. He also corroborated the testimony of his sister Jessibel Ausa and Anabella

Lumacao on the bad blood between Francisco Beatingo, Sr., and Moises Marcella.

### *Evidence for the Defense*<sup>[6]</sup>

On the other hand, the accused presented SPO1 Arthur Son, Remedios Berdensen, Eddie Alegato, SPO4 Sandy Escala and accused himself whose testimonies can be summed up as follows, to wit; SPO1 Son testified that he is the Admin PNCO of the Escalante City Police Office and as such he has custody of the Police Blotter. Pursuant to a subpoena sent him by the Court, he brought with him the Police Blotter bearing Entry No. 1788 dated November 29, 1995 0900H on page 0333 and certified true copy of the said extract which states: "Enrico Beatingo y Manlangat, 43 years old, married, former CVO resident of Sitio Cagay III, Barangay Langub, this municipality reported to this station that his father Francisco Beatingo SR., 63 years old and his brother Francisco Beatingo, Jr. were shot with the use of a handgun known as "sulpak" and .38 revolver by a certain Roger Pabon alias "Cabao" and alias "Canoy" all residents of Barangay Buenavista this Municipality on or *about 382100H November 1995 at Sitio Cagay IV, Barangay Buenavista, this municipality, while the said place were having their fiesta celebration, complainant further stated that his father died 15 minutes after the incident. While his brother was rushed to the Foundation Hospital, Sagay, Negros Occidental for medical treatment. Suspect fled away after the incident. Motive-unknown-case referred to Investigation and Intel Section. Enrico Beatingo complainant and SPO12 Francisco Villar, Jr. Desk Officer*". On cross examination, said police officer likewise testified that there is another entry in the said police blotter regarding the same incident which is denominated as Entry No. 1877 dated December 15, 1995 reported by Jessibel Beatingo Ausa.

Remedios Berdensen testified that: In the evening of November 28, 1995 at about 7:00 o'clock, she was at under the house of Evangeline Gale taking shelter from rain. When she was there, she noticed a group of persons playing cara y cruz when she hear a gun fire and saw Francisco Beatingo, Sr., was hit at the right side of his head. She saw the person who shot the victim and cannot identify him as he is a stranger. She is likewise acquainted with accused Allan Marcella and stated that it was not him who shot the victim as the assailant was taller, bulkier and bigger than accused Marcella.

Eddie Alegato for his part testified that: On that particular evening, he was at the fiesta celebration and was playing caray cruz when he saw a big man approach the victim Francisco Beatingo, Sr. When he heard a shot, he and his companions all scampered away in fear. He likewise testified that he is acquainted with accused Marcella and that he is sure that it was not Marcella who shot the victim.

SPO4 Sandy Escala testified that as far as he knows there was no investigation conducted by the Escalante City PNP on the Police blotter report made by Enrico Beatingo as no investigation report, sketches and other evidences were turned over to him by the then chief of the investigation section.

Lastly, the accused testified that he is innocent of the charges filed against him. The charges against him are pure fabrications and that he even attended the wake of the victim Francisco Beatingo, Sr. as he considered him a "godfather". He further stated that he was informed by Enrico Beatingo that his sister Jessibel Ausa was in Manila and was not at the wake of their father. He also denies knowing prosecution witness Lumacao as she is not from their place.

On November 17, 2010, the trial court promulgated the Joint Decision convicting herein accused-appellant of Murder under Criminal Case No. RTC- 1786. Consequently, a Commitment Order<sup>[7]</sup> was issued to the Director of the National Bilibid Prisons on that date.

On this instant appeal, the accused-appellant on July 4, 2011 filed his Brief<sup>[8]</sup> with the following Assignment of Errors:

1. THE TRIAL COURT GRAVELY ERRED IN HOLDING ACCUSED - APPELLANT GUILTY BEYOND REASONABLE DOUBT FOR THE CRIME CHARGE (sic) DESPITE THE UNREBUTTED AND UNCONTROVERTED POLICE REPORT MADE ON NOVEMBER 29, 1995 (A DAY AFTER THE INCIDENT) BY ENRICO BEATINGO, SON OF THE VICTIM FRANCISCO BEATINGO, SR., EVIDENCING AND POSITIVELY IDENTIFYING ROGER PABON ALYAS "CABAW" AS THE ONE AS THE ONE WHO SHOT FRANCISCO BEATINGO, SR..

2. THE TRIAL COURT GRAVELY ERRED IN HOLDING ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT FOR THE CRIME CHARGED, DESPITE THE UNREBUTTED AND UNCONTROVERTED TESTIMONIES OF DEFENSE WITNESSES REMEDIOS BERDENSEN, EDDIE ALIGATO AND ALLAN MARCELLA, THAT IT WAS NOT THE ACCUSED-APPELLANT WHO SHOT FRANCISCO BEATINGO, SR..

3. THE TRIAL COURT GRAVELY ERRED IN FINDING APPELLANT GUILTY BEYOND REASONABLE DOUBT OF THE CRIME CHARGED, DESPITE THE TESTIMONY OF DR. ELENA U. YAP WHO CONDUCTED THE AUTOPSY OF THE BODY OF FRANCISCO BEATINGO, SR., THAT THE CAUSE OF DEATH OF THE VICTIM WAS DUE TO HEMORRHAGE DUE TO ONE GUNSHOT WOUND MEASURING TWO (2) CENTIMETERS AT THE RIGHT PARIETAL REGION OF THE HEAD OF THE VICTIM, CAUSED BY ONE BULLET, CLEARLY INDICATING THAT THE WOUND WAS NOT CAUSED BY A GUNSHOT FROM A HOMEMADE SHOTGUN OR "SULPAK". IT IS A FACT THAT A SHOTGUN "SULPAK" COULD INFLICT A MULTIPLE GUNSHOT WOUNDS.

4. THE TRIAL COURT GRAVELY ERRED IN CONSIDERING THE TESTIMONY OF ALLEGED PROSECUTION WITNESS JESSIBEL BEATINGO Y AUZA, DESPITE THE UNREBUTTED AND UNCONTROVERTED TESTIMONY OF ACCUSED-APPELLANT THAT HE HAD ATTENDED THE WAKE OF FRANCISCO BEATINGO, SR. WHERE THE SON, ENRICO BEATINGO INFORMED HIM THAT HE HAD REPORTED TO THE POLICE THE SHOOTING OF HIS FATHER BY ROGER PABON ALYAS "CABAW", AND THAT JESSIBEL