

SECOND DIVISION

[G.R. No. 139178, April 14, 2004]

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. FLORENCIO CALICA, APPELLANT.

DECISION

CALLEJO, SR., J.:

This is an appeal from the Decision^[1] of the Regional Trial Court of Kidapawan City, Branch 23, in Criminal Case No. 2423 convicting appellant Florencio Calica of murder under Article 248 of the Revised Penal Code, sentencing him to *reclusion perpetua* and ordering him to indemnify the heirs of Igmedio Pispis in the amount of P50,000.

A criminal complaint for multiple murder against Florencio Calica, Ernesto Calica, John Doe, Peter Doe and Richard Doe was filed in the Municipal Circuit Trial Court of Makilala, Cotabato, docketed as Criminal Case No. 2070.^[2] Appended to the complaint was the sworn statement executed by Dominga Pispis with the assistance of Atty. Solema Jubilan dated January 13, 1986 taken by T/Sgt. Ricarte Marquez.^[3] Dominga testified during the preliminary investigation. Municipal Judge Elena B. De Leon thereafter issued an Order^[4] dated March 13, 1987 dismissing the case as to Ernesto Calica on the ground of lack of *prima facie* evidence and issued a warrant of arrest^[5] against the appellant on the same date. As the appellant and his co-accused remained at large, an alias warrant of arrest^[6] was issued on April 7, 1988. The appellant was finally arrested sometime in 1991.^[7] However, then Acting Judge Moises C. Carbonell issued a Resolution^[8] dated July 4, 1991 dismissing the case for insufficiency of evidence as the court disbelieved the testimony of Dominga. The provincial fiscal, on review, reversed the resolution.

An Information was thereafter filed on November 19, 1991 before the Regional Trial Court of Kidapawan, Cotabato, docketed as Criminal Case No. 2423, charging the appellant with multiple murder, thus:

That at around 2:00 o'clock in the morning of December 23, 1986, at Barangay Malabuan, Municipality of Makilala, Province of Cotabato, Philippines, the aforementioned accused, in company with several masked and unidentified persons, conspiring, confederating together, and mutually helping one another, did then and there, willfully, unlawfully feloniously and treacherously attack, assault and fired upon JOSEPH MONTILLA, LUIS VALDEZ, JR., IGMIDIO (sic) PISPIS, ROLANDO GONZALES and CARLITO ROLLUDA (sic), thereby hitting and inflicting upon the said individuals, multiple gunshot wounds in the different parts of their bodies, which caused their death.

With further aggravating circumstances of:

Committed at nighttime, in an uninhabited place and by a band, to facilitate the commission of the crime;

1. Evident premeditation; and
2. Taking advantage of superior strength.

CONTRARY TO LAW.^[9]

A warrant for the arrest of the appellant was issued on November 20, 1991.^[10] An alias warrant of arrest^[11] was issued on June 11, 1993 as the appellant remained at large. The appellant was again arrested and later ordered committed to the Provincial Warden of the Cotabato Provincial Jail on September 2, 1993.^[12]

The appellant moved for a reinvestigation^[13] of the case in view of the emergence of two new witnesses, Elias Palog and Agustin Alonzo. The court granted the same.^[14] The provincial prosecutor, however, recommended that trial of the case continue, as the allegation of the two witnesses, that the appellant was not present at the scene of the crime was not enough to overturn the original resolution which recommended the filing of the information.^[15]

The appellant, assisted by counsel, pleaded not guilty to the charge during his arraignment on December 13, 1993.^[16] Trial forthwith ensued.

The Case for the Prosecution^[17]

Spouses Igmedio and Dominga Pispis resided at Barangay Malabuan, Makilala, Cotabato. They had two daughters, one of whom was Dolores. The Pispis family lived in a hut that stood on a farm on which rubber trees grew.^[18]

At around 1:00 a.m. of December 23, 1986, while the Pispis family slept, Rolando "Boy" Gonzales, a neighbor, and fellow Ilocanos called out and asked about "Nong Tony." Dominga woke up and peeped through the unfinished portion of the wall of their house. She saw Gonzales, his hands tied at the back, and an armed man positioned in front of their door. Two more men, similarly armed, stood beside the house, firearms pointed towards it, while still two others were sitting on a carabao sled (*kangga*) nearby. The armed men wore bonnets over their heads.

Dominga went down to answer the door. Igmedio followed suit, but had to go back to get his pants on account of the cold. One of the armed men shouted and ordered that the light be put off. The men then shouted to Igmedio, "*Dalian mo!*," upon which Dominga went back upstairs. She noticed that her husband was sobbing.^[19] Outside, they were suddenly surrounded by five men who were wearing bonnets^[20] and armed with long firearms.^[21] One of the men put an arm on Igmedio's shoulder and forced the latter to go with them. Dominga tried to follow them and placed her arm on her husband, but the armed man parried her gesture.^[22] The armed men, with her husband in tow, proceeded to walk away. One of the men asked Igmedio why his shirt was torn, to which the latter replied, "It's alright, sir." Dominga, for her part, climbed up on the roof of their house and saw the group head towards the

direction of the house of Regino Taruma, which also led to the rubber plantation owned by a certain Irma Martinez, her husband's employer.^[23]

Dominga recognized one of the men as the appellant, Florencio Calica, who also happened to be her husband's second cousin and a member of the Civilian Home Defense Force (CHDF) of Bato.^[24] The appellant, who was wearing black pants and a long-sleeved uniform, positioned himself in front of the door of the hut, his firearm pointed towards Igmedio. He, like the other armed men, had a bonnet over his head; only the eyes, nose and mouth were visible. The appellant's bonnet, however, was loose. Dominga was almost face to face with the appellant, about merely half an arm's length away,^[25] and saw his face in the moonlight.^[26]

Then eleven-year-old Dolores, who was awakened by the commotion, also recognized the appellant, her uncle. His bonnet was loosened.^[27] She watched from inside the house, and peeped through the unfinished portion of the wall.^[28] Dolores saw Rolando Gonzales, Joseph Montilla, Luis Valdez, Jr. and her father being taken away by the armed men.

Not long thereafter, while Dominga and her children were praying for her husband's safety, they heard several bursts of gunfire. Igmedio never returned. His body was found at about 6:00 a.m. near a quarry in Malabuan, about one kilometer away from Barangay Villaflores.^[29] The lifeless bodies of four others were found: Carlito Rulloda, Luis Valdez, Jr., Rolando Gonzales, and Joseph Montilla.^[30] They were hogtied.^[31]

In the meantime, Lorena Valdez was with her family at their house in Barangay Villaflores, Makilala, Cotabato – her husband Luis Valdez, Jr., her brother Joseph Montilla, and her young children. Suddenly, armed men wearing masks came and took her husband and her brother away. The next time Lorena saw them was in the quarry, their lifeless bodies lying on the ground.^[32]

Meanwhile, Barangay Captain Andrino Garcia was informed that people were killed in the rubber plantation.^[33] He went there and saw the dead bodies of five men, including that of his godson, Igmedio Pispis, and his nephew, Rulloda. He then proceeded to the Makilala municipal hall and reported the matter to the authorities.^[34] The police went to the scene of the crime and loaded the lifeless bodies onto a vehicle to be brought to the funeral parlor.^[35] Garcia then instructed the relatives of the victim to go to the municipal hall to report everything they saw.^[36]

The respective certificates of death issued by Dr. Gervacio L. Albano indicate that the victims died of multiple gunshot wounds, and that the approximate time of death was at 2:00 a.m. of December 23, 1986.^[37]

The Case for the Defense

Agustin Alonzo testified that he was a native of Barangay Bato, Makilala, Cotabato, and a CHDF volunteer. At about 2:00 a.m. of December 23, 1986, he saw CHDF Commander Pedro Lopez who asked to be accompanied to Malabuan. Commander Lopez was with six people whose faces were covered. When they reached Malabuan,

the men “picked up” people, including Igmedio, who were suspected members of the New People’s Army (NPA).^[38] When he saw that the men who were taken were killed, he ran away. Alonzo also testified that he had known the appellant since the latter was a boy. He was not among the armed men involved in the abduction and killing.

Elias Palog, also a resident of Barangay Bato, Makilala, Cotabato, testified that he was a CAFGU member and a CHDF volunteer. He claimed that at around 8:00 a.m. of December 22, 1986, he was in the house of Commander Lopez at Barangay Bato. They talked about “getting some people” (*kuhaanon*) at Malabuan who were members of the NPA, particularly the victim Igmedio Pispis who was a member of the HUKBALAHAP. He stated that the appellant was not among the group who was with Pedro Lopez.^[39]

Elpidio Asidre testified that he was a farmer and a resident of Barangay Bato, Makilala, Cotabato, since 1959. He and the appellant were neighbors,^[40] as their houses were about a hundred meters away from each other.^[41] On December 22, 1986, Asidre was at his house preparing for the death anniversary of his mother. The appellant had arrived at 8:00 a.m. that morning to help him butcher a pig and a goat for the occasion.^[42] The appellant, along with Rudy Llanado, helped in preparing 80 kilos of the meat. The appellant stayed in the house until 3:00 p.m. the following day, December 23, 1986.^[43] Asidre testified that the appellant never left the house the entire time.^[44]

Asidre also testified that the house of the victim Igmedio Pispis in Barangay Malabuan was about ten kilometers away, or a three-to-four hour hike from his place. There were no other means of transportation at the time due to the difficult road conditions.^[45] The witness added that it was impossible for the appellant to have committed the crime charged because the latter was in their house helping with the preparations.^[46]

Rudy Llanado testified that he was married and had been a resident of Barangay Bato, Makilala, for twenty years. The appellant, as well as Asidre, were his neighbors. The appellant’s wife, Estrella Llanado Calica, was his sister.^[47] He corroborated Asidre’s testimony that there was a special occasion in the latter’s house on December 22, 1986. He stated that he arrived in Asidre’s house to help with the preparations at 3:00 p.m. that day. There were about thirty persons in the house, including the appellant. Llanado left the place at about 3:00 p.m. the next day.^[48]

According to Llanado, he and the appellant sliced the meat of the butchered pig and served food and drinks to the visitors. The appellant never left Asidre’s house. He was, thus, surprised when the appellant was implicated in the killing.^[49]

Alfredo Aca testified that he was a rubber tapper by profession and that he resided at Malabuan, Makilala, Cotabato. His house was about 200 meters away from that of Igmedio Pispis.^[50] He knew the appellant even as a little boy.^[51] In the evening of December 22, 1986, he was awakened by calls from six persons. They were armed, and asked for coffee. Before they left, the men asked him for directions to Igmedio

Pispis' residence. Aca merely pointed to the house, reasoning that he could not accompany them as his wife had just recently delivered a baby. The witness testified that the appellant was not among the armed men.

The appellant denied the charge lodged against him. He testified that he was a farmer and a long-time resident of Barangay Bato, Makilala, Cotabato. He confirmed his earlier testimony to the effect that it would take one three hours to get to Barangay Malabuan from Barangay Bato on foot, as the road was very difficult and one has to pass two mountains to get there.^[52] Another option was to travel by horseback.

At 8:00 a.m. of December 22, 1986, he went to the house of Elpidio Asidre to help in the food preparations for the death anniversary of the latter's mother. There present were Rudy Llanado, Asidre, the latter's daughter, and some visitors. He stayed there until about 3:00 p.m. of the next day because aside from serving food to the visitors, he joined the merrymaking and the drinking spree that followed. He was unable to sleep on the evening of December 22, 1986, as they were in the process of butchering the pigs and goats. He never left the house.

The trial court thereafter rendered a decision convicting the appellant of murder, the dispositive portion of which reads:

In view of all the foregoing, this Court finds and so holds that for the killing of Igmedio Pispis, accused Florencio Calica is found guilty beyond reasonable doubt of the crime of Murder as defined and penalized under Article 248 of the Revised Penal Code. Appreciating the aggravating circumstances of committing the crime in the nighttime and by a band and without any mitigating circumstances attending to its commission, accused Florencio Calica shall serve the penalty of *Reclusion Perpetua*. His detention from April 25, 1991 to July 4, 1991 and

subsequent detention from August 24, 1993 to July 13, 1994 is credited in full in his favor. He is directed to pay costs.

Accused Florencio Calica is directed to indemnify the heirs of deceased I[g]midio (sic) Pispis the sum of Fifty Thousand (P50,000.00) Pesos.

The property bond posted for his provisional liberty is cancelled and released. The Register of Deeds of Cotabato is directed to cancel the annotation in Transfer Certificate of Title No. T-51977. The Warden of the Provincial Rehabilitation Center of Cotabato is directed to take him into custody.

SO ORDERED.^[53]

On appeal before this Court, the appellant ascribes the following errors to the court *a quo*:

I

THE TRIAL COURT GRAVELY ERRED IN CONVICTING ACCUSED-