

FIRST DIVISION

[G.R. No. 120646, February 14, 2000]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
APOLINAR DANDO, ACCUSED-APPELLANT.**

D E C I S I O N

KAPUNAN, J.:

This is an appeal from a decision of the Regional Trial Court, Branch 33, Siniloan, Laguna finding PO3 Apolinar E. Dando ("accused-appellant") guilty beyond reasonable doubt of murder.

The Information filed against accused-appellant reads:

That on or about 6:19 o'clock in the evening of November 20, 1991 at Barangay M. Pandeño, Municipality of Siniloan, Province of Laguna and within the jurisdiction of this Honorable Court, the above-named accused while conveniently armed with a deadly weapon (cal. 45) with intent to kill, with treachery and evident premeditation, did then and there willfully, unlawfully and feloniously attack, assault and shoot several times one CESAR CASTRO y VALMONTE with the said weapon, thereby inflicting upon him gunshot wounds on the vital parts of his body which directly caused his death, to the damage and prejudice of the surviving heirs of the victim.

That the qualifying and aggravating circumstances of treachery, evident premeditation and abuse of superior strength attended the commission of the crime.

CONTRARY TO LAW.^[1]

On the same date, accused-appellant filed a motion for inhibition and for a change of venue of the case because several staff members of Branch 33, RTC of Laguna were related to the victim. On February 12, 1992, Judge Venancio M. Tarriela, the Presiding Judge of said branch, granted the motion.^[2] On May 14, 1992, this Court approved the change of venue and designated Judge Jose C. Mendoza of Branch 26, RTC of Sta. Cruz, Laguna, to try and decide the case.^[3]

Accused-appellant filed a petition for bail^[4] which was denied after hearing on the ground that the evidence against accused-appellant is strong.^[5] Accused-appellant then went to the Court of Appeals via petition for *certiorari* questioning the denial of his petition for bail.

Subsequently, on account of another motion for inhibition,^[6] filed by accused-appellant alleging that a prosecution witness in the hearing for the petition for bail

was related to a staff member of Branch 26, the case was re-raffled and transferred to Branch 28, RTC of Sta. Cruz, Laguna, presided by Judge Fernando Paclibon, Jr.

On June 18, 1993, the Court of Appeals rendered its decision dismissing accused-appellant's petition questioning the denial of his motion for bail, for lack of merit.^[7]

During trial and after the prosecution witness had already rested its case, the Presiding Judge of Branch 28, RTC of Sta. Cruz, Laguna, likewise, inhibited himself from further hearing the case when accused-appellant questioned his impartiality because of his refusal to grant accused-appellant's motion to recall prosecution witness Susana Masacupan to the witness stand as a hostile witness.^[8] The case was transferred back to Branch 26, RTC of Laguna, then presided by Judge Pablo Francisco.

On May 2, 1995, the trial court rendered its decision the dispositive portion of which reads:

WHEREFORE, this Court finds the accused Apolinar Dando guilty beyond reasonable doubt of the crime of murder as charged in the information, qualified by treachery and committed with the aggravating circumstances of use of craft or disguise and evident premeditation and hereby sentences him to suffer the penalty of *reclusion perpetua* and to pay the heirs of Cesar Castro as follows:

- a.) the sum of P50,000.00 as death indemnity;
- b.) the sum of P1,628,000.00 for loss of earning capacity; and
- c.) the sum of P35,974.00 as reimbursement for expenses incurred in the wake and burial of the victim; and to pay the costs.

SO ORDERED.^[9]

The prosecution's account of the case as narrated in the brief of the Solicitor General is as follows:

Prosecution witness Aldwin Gemanel testified that on November 20, 1991, he went to the house located at Pandiño Street, Siniloan, Laguna of his uncle, Angelito Millares, Jr. (Junior Millares) to look for his (Gemanel's) father. Junior Millares' house was about 100 to 150 meters away from that of the victim, Cesar Castro. Upon arrival at his uncle's place, a party was on-going as it was the birthday of the former (p. 3, tsn, June 17, 1992). At the said party, gunshots were fired by appellant and Junior Millares to celebrate the occasion (p. 4, tsn, October 20, 1992 and pp. 14-15, tsn, August 26, 1993). After a few hours at the birthday party, Gemanel decided to go to his grandmother's house, a mere three (3) houses away from his uncle's house (p. 5, tsn, June 17, 1992). On the way to his grandmother's house, he saw appellant Apolinar Dando, sat on the side-car of a tricycle parked along Pandiño Street in front of Junior Millares' house and placed a white handkerchief over his face (p. 5-6, tsn, *Ibid.*). Though puzzled by the action of appellant, Gemanel proceeded to his grandmother's house and stayed there for almost an

hour (pp. 20-21, tsn, September 22, 1993). When Gemanel went out of the house, he saw appellant get off the tricycle with the handkerchief covering his face and walk towards the direction of the town plaza (pp. 30-31, tsn, *Ibid.*). At that time, Gemanel followed appellant and then he (Gemanel) entered a bakery to buy bread (pp. 28-29, tsn, *Ibid.*). While inside the bakery, Gemanel heard a shot, so he ran outside to look where the shot came from (p. 36, tsn, *Ibid.*). Thereupon, he saw appellant with the same white handkerchief covering his face, firing three (3) more shots at Cesar Castro, who was standing on the street in front of his (Castro's) house. After the fourth shot appellant ran towards the "*paraanan*" or alley, to the direction of the town plaza (pp. 37-43, tsn, *Ibid.*).

Gemanel rushed home and told his mother what he had just witnessed (p. 53, tsn, September 22, 1993). His mother then went to the crime scene while he was left to tend their store (p. 54, tsn, *Ibid.*). When his mother came back after about ten (10) minutes, he confided to her that he saw appellant shoot Cesar Castro (p. 54, tsn, *Ibid.*). His mother then advised him not to tell anyone. Then he went to the crime scene for a closer look of the victim (p. 55, tsn, *Ibid.*).

The following day on November 21, 1991, Gemanel was fetched by police officers from his school and was brought to the municipal building for questioning. The day after, on November 22, 1991, he executed a statement (Exhibit "A"; pp. 8-9, tsn, July 14, 1992).

Gemanel further testified that he was present when a slug was recovered from the front yard of his uncle's (Millares') house (p. 11, tsn, July 14, 1992). He personally saw the slug which was subsequently handed to Celso Castro, son of Cesar Castro. He learned that the slug found was one of those fired from the service pistol of appellant when the latter fired his gun during the birthday party of his uncle (pp. 11-12, tsn, *Ibid.*).

Susan Masakupan, 29 years of age, married and a resident of Pandiño Street, Siniloan, Laguna, corroborated the testimony of Gemanel. She testified that on or about 6:00 o'clock in the evening of November 20, 1991, while she was getting dry clothes hanging at their clothesline located at their front yard, a man wearing a white polo shirt with designs and a pair of khaki pants and had a handkerchief covering his face passed by. Surprised with the man's covered face, her gaze followed the man until the latter stopped by victim Cesar Castro. Thereupon the man shot Cesar Castro and when the latter fell down, the man continued on shooting at Cesar Castro two (2) or more shots. After the additional shots, the man ran towards an alley (pp. 2-5, tsn, July 21, 1992).

SPO4 Efren Palma, Deputy Station Commander of the PNP, Siniloan, Laguna, testified that three (3) slugs and three (3) empty shells were recovered from the crime scene on the night of November 20, 1991 (p. 6, tsn, October 5, 1992).

Josue Flores, property custodian of the PNP, Siniloan, Laguna, testified that he issued to appellant, who is a member of PNP, Siniloan, Laguna,

(one 1) service firearm, which was a caliber .45 pistol, Remington, with serial number 1945012 (pp. 3, 5 and 7, tsn, August 11, 1992).

Florentino Rañada, a member of the Central Intelligence Service of Siniloan, Laguna, testified that he received from the Siniloan, Laguna police station the following specimens:

- one (1) slug .45 caliber ammunition;
- three (3) pieces slug for .45 caliber ammunition;
- three (3) pieces empty shells for a .45 caliber ammunition;
- one (1) piece caliber Remington pistol with serial number 1945012.

and issued a receipt for them (Exhibits "E" and "E-1"; pp. 17-20, tsn, August 11, 1992).

Rañada further testified that one (1) slug of a .45 caliber pistol recovered from the body of the victim, which was turned over to him by Arvee Castro, brother of the victim (pp. 27-28, tsn, *Ibid.*) has [sic] sent together with the above specimens to the PNP crime laboratory for ballistic examination (p. 30, tsn, *Ibid.*).

Susan R. Jalla, PNP officer and criminologist, testified that she conducted a ballistic examination on the specimens submitted (Exhibits "H", "I", "J" and "K"; pp. 11-13, tsn, *Ibid.*).

She issued a certification (Exhibit "N") stating: "... microscopic examination, MS-1, MRS-1, MRS-15 revealed the same individual characteristics as the test bullets and test cartridges, respectively fired from the above-mentioned firearm" (p. 17, tsn, *Ibid.*).

Dr. Priscilla Realeza, Rural Health Physician of Pakil, Laguna, testified that she conducted a postmortem examination on the cadaver of Cesar Castro. She issued an Autopsy Report (Exhibits "R" and "R-1") finding that the victim sustained eleven (11) gunshot wounds (pp. 6-7, tsn *Ibid.*) and that one (1) bullet slug was extracted from his body (p. 12, tsn, *Ibid.*).^[10]

Accused-appellant, on the other hand, gave the following version of the incident: On November 20, 1991, he was a member of the Philippine National Police (PNP) with the rank of PO3 and detailed as security to the mayor of Siniloan, Laguna. At around one o'clock in the afternoon of that day, he arrived at the house of Junior Millares who was then celebrating his birthday. He participated in a drinking spree up to three o'clock in the afternoon. On that occasion, there was no firing of a gun. He did not bring his gun to the birthday party because he was not in a habit of bringing his gun when he attended such occasions.^[11] When he left the party, he went straight home and slept. He woke up at around midnight because of an upset stomach and vomitted. He went back to sleep and woke up the second time in the morning of November 21, 1991, changed his clothes, ate his breakfast and went to work at

around eight o'clock in the morning.^[12] It was only on November 22, 1991 that he learned from his wife that the Chief of Police and the Mayor were looking for him and that he was a suspect in the killing of Castro. After eating his supper, he went to the municipal building where the Chief of Police informed him that he was a suspect in the killing of Castro and was placed under technical arrest. He surrendered his firearm for ballistic examination to show that he had nothing to do with the killing. Thereafter, he did not know what happened to the said firearm.^[13]

The testimony of accused-appellant as to his whereabouts during the time the crime was committed was supported by his wife Herminia Dando who testified before the trial court that on November 20, 1991 she went home at 4 o'clock in the afternoon to cook their supper. Less than an hour later, her husband arrived, went to the sala and slept until the next morning. They had breakfast together and after that, they went to their respective places of work.^[14]

Accused-appellant assigns the following errors committed by the trial court, to wit:

I

THE TRIAL COURT ERRED IN GIVING FULL FAITH AND CREDIT TO THE TESTIMONY OF PROSECUTION WITNESS ALDWIN GEMANEL THAT ACCUSED APPELLANT APOLINAR DANDO WAS THE ASSAILANT WHO SHOT THE VICTIM CESAR CASTRO.

II

THE TRIAL COURT ERRED IN FINDING THAT THE EMPTY SHELLS AND SLUGS SUBMITTED FOR BALLISTIC EXAMINATION WERE THOSE RECOVERED FROM THE SCENE OF THE CRIME AND ONE SLUG FROM THE BODY OF THE VICTIM AND CAME FROM THE SERVICE FIREARM OF THE ACCUSED APPELLANT.

III

THE TRIAL COURT ERRED IN FAILING TO CONSIDER THE PHYSICAL EVIDENCE CONSISTING OF EMPTY SHELLS AND SLUGS PRESENTED BY THE PROSECUTION AS TAINTED OR POLLUTED, AND HIGHLY UNRELIABLE.

IV

THE TRIAL COURT ERRED IN CONCLUDING THAT THE TESTIMONY OF ALDWIN GEMANEL AND THE BALLISTIC EXAMINATION OF THE SERVICE FIREARM OF ACCUSED APPELLANT CONSTITUTED PROOF BEYOND REASONABLE DOUBT OF THE GUILT OF THE ACCUSED FOR THE CRIME OF MURDER.

V

THE TRIAL COURT ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF MURDER AND IN