

THIRD DIVISION

[G.R. No. 126536-37, February 10, 2000]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. CARLIE ALAGON AND DOMINADOR RAFAEL, ACCUSED-APPELLANTS.

DECISION

GONZAGA-REYES, J.:

This is an appeal from the decision^[1] of the Regional Trial Court of Pasig City (Branch 156), finding accused-appellants Carlie Alagon (ALAGON) and Dominador Rafael (RAFAEL) guilty of two counts of murder and sentencing them as follows:

In Criminal Case No. 104510, to suffer the penalty of *reclusion perpetua*; to proportionately indemnify the heirs of the deceased Elarde Magno y Fernando in the sum of Fifty Thousand Pesos (50,000.00); to pay the sum of Eighty-Two Thousand Pesos (P82,000.00) as expenses incident to the burial and the further sum of One Hundred Thousand Pesos (P100,000.00) by way of moral and exemplary damages all without subsidiary imprisonment in case of insolvency, and to pay the costs.

In Criminal Case No. 104502, to suffer the penalty of *reclusion perpetua*; to proportionately indemnify the heirs of the deceased Isidro Barcelona y Pasman in the sum of fifty Thousand pesos (P50,000.00); to pay the sum of One Hundred Forty Thousand Pesos (P140,000.00) as expenses incident to the burial and the further sum of One Hundred Thousand Pesos (P100,000.00) by way of moral and exemplary damages all without subsidiary imprisonment in case of insolvency, and to pay the costs.^[2]

Two separate Informations were filed against ALAGON and RAFAEL, both dated February 2, 1994, charging them with two counts of murder for the deaths of Elarde Magno and Isidro Barcelona, thusly:

Crim. Case No. 104501

"That on or about the 17th day of January 1994 in the Municipality of Taguig, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and mutually helping and aiding one another, armed with armalite rifle (M-16), with intent to kill and with evidence (sic) premeditation and treachery, did, then and there, willfully, unlawfully and feloniously shoot with said armalite rifle (M-16) one Elarde Magno, hitting him the (sic) different part of his body thereby inflicting upon the latter gunshot wounds which directly caused his death.

CONTRARY TO LAW."^[3]

Crim. Case No. 104502

"That on or about the 17th day of January 1994 in the Municipality of Taguig, Metro Manila, Philippines, and within the jurisdiction of this honorable Court, the above-named accused, conspiring and confederating together and mutually helping and aiding one another, armed with armalite rifle (M-16), with intent to kill and with evidence (sic) premeditation and treachery, did, then and there, willfully, unlawfully and feloniously shoot with said armalite rifle (M-16) one Isidro Barcelona, hitting him on the different part of his body thereby inflicting upon the latter gunshot wounds which directly caused his death.

CONTRARY TO LAW."^[4]

Upon arraignment, accused-appellants ALAGON and RAFAEL entered a plea of not guilty. Thereafter, the two cases were heard jointly. As mentioned at the outset, the trial court rendered a judgment of conviction on September 13, 1996. In view of the penalty imposed, a joint appeal was filed directly with this Court, with the following assignment of errors:

I.

THE TRIAL COURT ERRED IN FINDING THAT ACCUSED-APPELLANT DOMINADOR RAFAEL CONSPIRED WITH CO-ACCUSED-APPELLANT CARLIE ALAGON, ON WHICH BASIS APPELLANT RAFAEL WAS FOUND GUILTY OF TWO (2) COUNTS OF MURDER.

II.

THE TRIAL COURT ERRED IN FINDING THE ACCUSED-APPELLANT DOMINADOR RAFAEL GUILTY BEYOND REASONABLE DOUBT OF TWO (2) COUNTS OF MURDER.

III.

THE TRIAL COURT ERRED IN FINDING THE ACCUSED-APPELLANT CARLIE ALAGON GUILTY BEYOND REASONABLE DOUBT OF TWO (2) COUNTS OF MURDER.^[5]

The case for the prosecution is woven mainly on the testimony of Remedios Punzalan which was summarized by the trial court as follows:

"At Purok 14, South Daang Hari, Bagong Tanyag, Taguig, Metro Manila, a certain property occupied by many residents, including her, is being claimed by Aida Macaraig and Luis Posadas. When these alleged owners wanted to close this "Posadas property", the residents thereat objected.

The alleged owners of the "Posadas property" posted several security guards within the area beginning on December 1, 1993. Two (2) meters outside of the boundary of the "Posadas property", the residents held

protest vigils in two (2) groups, one at daytime, another group at night. They put up banners seeking help from the government and with the words "Alagon and Neri out!" among others.

All four (4) accused are among the security guards of the FEMJEG Security Agency who were detailed at the "Posadas property" beginning on December 1, 1993.

In the evening of January 17, 1994, from 7 o'clock, she stayed at the site where the vigil was being held. At about 10:30 PM, she left.

After fifteen minutes, accompanied by her husband, Jess Punzalan, and two other men, Isidro Barcelona and Elarde Magno, she came back to the site of the vigil to join Rebecca Puseran, Erlina Barcelona, Belen Juarez, a niece of Isidro Barcelona, and two (2) boys.

Her husband, Jess, Isidro Barcelona, and Elarde Magno soon left the vigil site and headed out towards the gate of the "Posadas property". Then she saw the three (3) of them stop to sit and engage in conversation. This was about fifty (50) meters from the vigil site.

She could clearly see these three (3) men because the place was lighted by "*sulo*". A "*sulo*" is actually a bottle of gin, which they had instead filled with kerosene and stuck with a piece of cloth to serve as its wick and wrapped with foil at the top. This "*sulo*" gives out a very bright light and they had about five (5) of these aligned at the vigil site and one (1) near the gate of the "Posadas property".

Meanwhile, accused Rafael had approached the vigil site asking them to put out their "*sulo*". When they did not oblige, accused Rafael blew out the "*sulo*" by himself and hurriedly left.

She re-lighted the "*sulo*" but somebody threw a stone at it. So, again the "*sulo*" was put off.

Simultaneously with the throwing of the stone at the "*sulo*", someone shouted, "*Dapa!*" (duck).

Instead of ducking on the ground, she looked at where the voice came from (which was where her husband, Isidro Barcelona, and Elarde Magno, were sitting at the moment) and saw accused Alagon, wearing a light blue vest over a white t-shirt and white short pants, standing between Isidro Barcelona and Elarde Magno and holding an armalite.

She saw accused Alagon, whom she identified in open court, first shoot Isidro Barcelona, then Elarde Magno, killing both of them. She was so shocked that she could not move from her place even when she saw that accused Alagon was facing towards the women holding the vigil and aiming his gun at them. Only after her women companions started to shout did she regain her composure and she ran to the only place she thought was where she can safely hide – towards accused Alagon, such that their shoulders even bumped each other's."^[6]

The other prosecution witness, Celedonio Arandela, Jr., also a resident at Purok 14, Daang Hari, Bagong Tanyag, Taguig, Metro Manila, did not witness the actual shooting, but nevertheless bolstered the testimony of Remedios Punzalan. His testimony was summarized by the trial court as follows:

At about 11 o'clock in the evening of January 17, 1994, coming from the house of a friend, he stopped to converse with Isidro Barcelona, Elarde Magno, and Jess Punzalan, who were fifty (50) meters away from where the vigil was taking place. While talking with these three (3), he noticed accused Rafael put off one (1) of the four (4) lights at the vigil site.

Sensing something amiss, he walked about thirty (30) meters away from the three (3) men and stayed under an "*aratis*" tree. He was about to sit down when he heard somebody shout: "*Dapa, walang kikilos.*"

Having had previous occasions when accused Alagon would poke his gun at him for reasons he does not know, he recognized the voice of the one who shouted: "*Dapa, walang kikilos*" as that of accused Alagon's.

Then he heard more or less seven (7) gunshots fire.

x x x x x x x x x.

x x x x x x x x x.

He went back to where he had earlier on been talking with the three (3) men and heard somebody calling out for help. Together with some other people who came to help, he went to the place of the shooting incident and saw Elarde Magno and Isidro Barcelona lying prostrate on the ground.

x x x x x x x x x."^[7]

Accused-appellants ALAGON and RAFAEL had denial for their defense. ALAGON's testimony was summarized by the trial court as follows:

He is a security guard connected with the FEMJEG Security and Allied Services. He was assigned as supervising security guard at the "Posadas property" and on January 17, 1994, his tour of duty was from 7 PM to 7AM. His service firearm on that date was a .38 caliber.

The "Posadas property" that he was guarding along with other security guards is more or less five (5) hectares. There were four (4) guard posts at this property; one in the clubhouse where the radio control is; one at tower 1; another at tower 2; and still another, a new post at the middle of the property.

The new post is more or less 200 meters away from the clubhouse and around 10 meters or less from an opening in the property which is used by residents for passing through.

At around 11 PM of January 17, 1994, while he was alone at the

clubhouse, monitoring the radio, he heard about ten (10) successive gunshots coming from the side of the new post but paid no attention to it because it was far from their area. At that time, security guards Cruz and Lamera were at tower 1. At tower 2 were security guards Cabrera and Herrera. Security guard Cesar Patacsil was at the new post.

He received a call on the radio from security guard Patacsil asking him to come over at the "*labasan*" because there was a commotion outside the "Posadas property", in the open fence which is about three (3) meters wide. He obliged, but first passed by the barracks inside the clubhouse to have somebody go with him to the area which was dark. Security guard Rafael, one of the accused in these cases and who was off-duty at that time, went with him and the two (2) of them proceeded to the post of security guard Patacsil.

x x x.

Reaching the new post, he inquired from security guard Patacsil what was happening and the latter told him that there was a commotion outside which he feared could reach inside.

He thus radioed the security guards at the two (2) towers advising them to secure the area.

From the new post, he saw some male and female persons at the open area. He even recognized two (2) of them as the spouses Jess and Remedios ("*Tisay*") Punzalan.

He did not try to find out what the commotion earlier reported to him was all about and only learned of the killing of the victims in these cases when the NBI arrested him on January 29, 1994. He did not see it when the incident occurred but is definite that it happened outside the "Posadas property".^[8]

On the other hand, a summary of the testimony of accused-appellant RAFAEL reads thus:

He is a security guard of the FEMJEG Security Agency who was assigned at Posadas, Sucat Subdivision in the month of January, 1994.

In the evening of January 17, 1994, at about 11 PM and being off-duty, when he was sleeping at the barracks near the clubhouse inside the "Posadas" compound, he was awakened by accused Alagon who asked him to accompany him in going to security guard Patacsil's post. The two (2) of them walked to the place and he noticed the women outside, more or less 15 meters from the side of the compound.

There was a commotion but he did not know what it was all about. Neither was he informed that there was a killing that happened during that night. As a security guard at the compound, he never roamed around the "Posadas property" because it was his commander who did that.