

## SECOND DIVISION

**[ G.R. Nos. 100801-02, August 25, 2000 ]**

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
DONATO B. CONTINENTE AND JUANITO T. ITAAS, JOHN DOE,  
PETER DOE, JAMES DOE, PAUL DOE AND SEVERAL OTHER DOES  
(AT LARGE), ACCUSED, DONATO B. CONTINENTE AND JUANITO  
T. ITAAS, ACCUSED-APPELLANTS.**

### DECISION

**DE LEON, JR., J.:**

Before us on appeal is the Decision<sup>[1]</sup> dated February 27, 1991 of the Regional Trial Court of Quezon City, Branch 88, in Criminal Cases Nos. 89-4843 and 89-4844 finding herein appellants guilty beyond reasonable doubt of the crimes of murder and frustrated murder, respectively for the killing of U.S. Col. James N. Rowe and for seriously wounding Joaquin Vinuya.

It appears that appellant Donato Continente and several other John Does were initially charged with the crimes of murder and frustrated murder in two (2) separate Informations dated June 20, 1989 in connection with the shooting incident on April 21, 1989 at the corner of Tomas Morato Street and Timog Avenue in Quezon City which caused the death of U.S. Col. James N. Rowe while seriously wounding his driver, Joaquin Vinuya. After the arrest of another suspect, Juanito Itaas, on August 27, 1989 in Davao City, the prosecution, with prior leave of court, filed two (2) separate amended Informations for murder and frustrated murder to include Juanito T. Itaas, among the other accused. The amended Informations in Criminal Cases Nos. 89-4843 and 89-4844 read:

Criminal Case No. Q-89-4843 for Murder:

"That on or about the 21st day of April, 1989, in Quezon City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring together, confederating with and mutually helping one another, with intent to kill, with evident premeditation and treachery and with the use of armalite rifles and motor vehicles, did then and there wilfully, unlawfully and feloniously attack, assault, and employ personal violence upon the person of COL. JAMES N. ROWE, a U.S. Army Officer, by then and there firing at him while then on board a Toyota car, hitting him on the different parts of his body, thereby inflicting upon him serious and mortal gunshot wounds, which were the direct and immediate cause of his death, to the damage and prejudice of the heirs of said Col. James N. Rowe in such amount as may be awarded under the provisions of the Civil Code.

CONTRARY TO LAW."

Criminal Case No. Q-89-4844 for Frustrated Murder:

"That on or about the 21st day of April 1989, in Quezon City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring together, confederating with and mutually helping one another, with intent to kill, with evident premeditation and treachery and with the use of armalite rifles and motor vehicles, did, then and there wilfully, unlawfully and feloniously attack, assault and employ personal violence upon the person of JOAQUIN BINUYA, by then and there firing at him while then on board a Toyota car, hitting him on the scalp and body, thereby inflicting upon him serious and mortal gunshot wounds, thus performing all the acts of execution which would have produced the crime of murder, but nevertheless did not produce it, by reason of causes independent of their own will, that is the timely intervention of medical assistance, to the damage and prejudice of said Joaquin Binuya in such amount as may be awarded under the provisions of the Civil Code.

CONTRARY TO LAW."

Upon being arraigned on August 31, 1989, appellant Donato B. Continente, assisted by his counsel of choice, pleaded "Not guilty" to each of the amended Informations in both criminal cases. On the scheduled arraignment of appellant Juanito Itaas on October 31, 1989, appellant Itaas, upon the advice of his counsel, refused to enter any plea. Hence, the trial court ordered that a plea of "Not guilty" be entered in each of the amended Informations in both criminal cases for the said appellant.

From the evidence adduced by the prosecution, it appears that on April 21, 1989 at around 7:00 o'clock in the morning, the car of U.S. Col. James N. Rowe, Deputy Commander, Joint U. S. Military Assistance Group (JUSMAG for brevity), was ambushed at the corner of Tomas Morato Street and Timog Avenue in Quezon City. Initial investigation by the Central Intelligence Service (CIS for brevity), National Capital District Command, Camp Crame, Quezon City which was led by Capt. Gil Meneses, Assistant Chief of the Special Investigation Branch, CIS, shows that on the date and time of the ambush, Col. James Rowe, was on board his gray Mitsubishi Galant car which was being driven by Joaquin Vinuya; and that they were at the corner of Tomas Morato Street and Timog Avenue in Quezon City on their way to the JUSMAG Compound along Tomas Morato Street when gunmen who were on board an old model Toyota Corolla car suddenly fired at his car, thereby killing Col. Rowe and seriously wounding his driver, Joaquin Vinuya. The car that was used by the gunmen was followed by a Mitsubishi Lancer car when it sped away from the site of the ambush.<sup>[2]</sup> The same Toyota Corolla car was later recovered on the same day by a team from the Philippine Constabulary (PC), North Sector Command, led by PC/Sgt. Fermin Garma, at No. 4 Windsor Street, San Francisco Del Monte in Quezon City.<sup>[3]</sup>

Upon further investigation of the case, the CIS agents established through a confidential intelligence information the involvement of appellant Donato Continente, an employee of the U.P. Collegian in U.P. Diliman, Quezon City, in the ambush of Col. James Rowe and his driver. Accordingly, on June 16, 1989, the CIS investigation team proceeded to the U.P. campus in Diliman, Quezon City to conduct a surveillance on appellant Donato Continente. After accosting appellant Continente inside the said U.P. campus, the CIS team took him to Camp Crame in Quezon City for questioning.<sup>[4]</sup> During the interrogation which was conducted by CIS

Investigator Virgilio Pablico in the presence of Atty. Bonifacio Manansala in Camp Crame on June 17, 1989, appellant Continente admitted to his participation in the ambush of Col. James Rowe and his driver as a member of the surveillance unit under the Political Assassination Team of the CPP-NPA.<sup>[5]</sup> Among the documents confiscated from appellant Continente by the CIS agents, and for which a receipt dated June 16, 1989 was prepared and issued by Sgt. Reynaldo dela Cruz, was a letter addressed to "Sa Kinauukulan". At the dorsal right hand side of the letter appear the acronyms "STR PATRC" which allegedly mean "Sa Tagumpay ng Rebolusyon" and "Political Assassination Team, Regional Command".<sup>[6]</sup>

Another confidential intelligence information established the participation of appellant Juanito Itaas in the said ambush of Col. James Rowe and his driver on April 21, 1989. Appellant Itaas, who was a known member of the Sparrow Unit of the NPA based in Davao City was arrested in Davao City and was brought to Manila by Capt. Gil Meneses for investigation.<sup>[7]</sup> CIS Investigator Virgilio Pablico investigated and took down the statements of appellant Itaas who disclosed during the investigation that he was an active member of the Sparrow Unit of the NPA based in Davao City and confessed, in the presence of Atty. Filemon Corpuz who apprised and explained to him his constitutional rights, that he was one of those who fired at the gray Mitsubishi Galant car of Col. James Rowe at the corner of Tomas Morato Street and Timog Avenue on April 21, 1989.<sup>[8]</sup> The said appellant identified the Toyota Corolla car that the assailants rode on April 21, 1989 and the gray Mitsubishi Galant car of Col. Rowe.<sup>[9]</sup>

Meanwhile, it appears that the ambush on Col. James Rowe and his driver was witnessed by a certain Meriam Zulueta. The testimony of prosecution eyewitness Meriam R. Zulueta reveals that at around 7:00 o'clock in the morning of April 21, 1989, she was about to cross the Tomas Morato Street on her way to the JUSMAG Compound in Quezon City to attend a practicum in the JUSMAG Mess Hall when she heard several gunshots. Upon looking at the direction where the gunshots emanated, she saw persons on board a maroon car firing at a gray car at a distance of more or less one (1) meter at the corner of Tomas Morato Street and Timog Avenue in Quezon City. Zulueta returned to the side of the street to seek for cover but could not find any so she docked and covered her head with her bag while continuously looking at the persons who were firing at the gray car.<sup>[10]</sup> She recognized appellant Juanito Itaas when the latter was presented for identification in Camp Crame as the person, directly behind the driver of the maroon car, whose body was half exposed while he was firing at the gray car with the use of along firearm.<sup>[11]</sup> The shooting incident lasted for about five (5) seconds only after which the maroon car made a U-turn to Timog Avenue toward the direction of Quezon Boulevard while being followed by a white Mitsubishi Lancer car.<sup>[12]</sup>

Prosecution eyewitness Zulueta likewise recognized the driver of the white Mitsubishi Lancer car as the same person whom she had encountered on two occasions. Zulueta disclosed that in the morning of April 19, 1989, the white Mitsubishi Lancer car was parked along the side of Tomas Morato Street which was near the corner of Scout Madrinas Street. Her attention was caught by the driver of the car, who was then reading a newspaper, when the latter remarked "Hoy pare, ang sexy. She-boom!" as she was walking along the street toward the JUSMAG Compound. On April 20, 1989, she saw the same person inside the white Mitsubishi Lancer car which was then parked along the side of Tomas Morato Street while she

was again on her way to attend practicum in the JUSMAG Compound. She learned of the identity of the driver as a certain Raymond Navarro, who is allegedly a member of the NPA, from the pictures shown her by the CIS investigators in Camp Crame.  
[13]

Prosecution witness Zulueta also recognized appellant Donato Continente whom she had encountered on at least three (3) occasions at a carinderia outside the JUSMAG Compound. Her first encounter with appellant Continente was at around three o'clock in the afternoon on April 17, 1989 when she went out of the JUSMAG Compound to a carinderia nearby. She mistook the said appellant for a tricycle driver who was simply walking around the premises. She saw appellant Continente in the same carinderia again on the following day, April 18, 1989, and she was even teased by her companions that he was her escort. On April 19, 1989, Zulueta saw appellant Continente for the third time inside the same carinderia while the latter was merely standing. She came to know the identity of appellant Continente when Continente was presented to her in Camp Crame for identification. She thought that he was the tricycle driver whom she had seen in the carinderia near the JUSMAG Compound.<sup>[14]</sup>

Joaquin Vinuya testified that he was employed by the JUSMAG, as driver, and assigned to Col. James Rowe. On April 21, 1989, he fetched Col. Rowe from his house in Potsdam Street, Greenhills, Mandaluyong to report for work in JUSMAG, Quezon City. He drove along EDSA and turned left upon reaching Timog Avenue in Quezon City. While he was making a right turn at the intersection of Timog Avenue toward Tomas Morato Street, he noticed four (4) people on board a red car, two (2) of whom suddenly opened fire at the car that he was driving hitting him in the process. The shooting incident happened very fast and that he had no opportunity to recognize the persons inside the red car. Despite the incident, Vinuya managed to drive the car to the JUSMAG Compound. Upon arrival at the JUSMAG Compound, he found out that Col. James Rowe, who was sitting at the back seat of the car, was also hit during the shooting incident.<sup>[15]</sup>

Col. James Rowe and Joaquin Vinuya were initially brought to the V. Luna Hospital in Quezon City for treatment. Subsequently, they were transferred to the Clark Air Base Hospital in Pampanga. It was only then that Vinuya learned of Col. James Rowe's death whose body was already wrapped in a blanket. Vinuya was treated in the Clark Air Base Hospital in Pampanga for four (4) days for the injuries he sustained on his head, shoulder, and on the back portion of his left hand. Thereafter, he was taken back to JUSMAG Compound in Quezon City to recuperate.<sup>[16]</sup>

Prosecution witnesses Dr. Walter Divers and Dr. Jose Santiago testified on their respective medical findings<sup>[17]</sup> on the victims. Dr. Divers confirmed in court the contents of his medical report dated April 21, 1989 which shows that Col. Rowe sustained a gunshot wound on the left side of his head and abrasions on other parts of his body and that he was pronounced dead upon arrival at the V. Luna Hospital in Quezon City.<sup>[18]</sup> On the other hand, Dr. Santiago identified the medical report dated April 25, 1989 that he prepared relative to the treatment that he administered on Joaquin Vinuya. The report shows that Vinuya sustained three (3) superficial injuries on the scalp, on the left shoulder, and on the back of the left hand which could have been caused by bullets that came from a gun; and that the wounds could have caused the death of Vinuya without the medical treatment that lasted for four (4) days.<sup>[19]</sup>

For the defense, appellant Juanito Itaas testified and denied the truth of the contents of his sworn statements which are respectively dated August 29, 1989 and August 30, 1989, insofar as the same establish his participation in the ambush of Col. James Rowe and his driver on April 21, 1989. Appellant Itaas testified that he was allegedly tortured by his captors on August 27 and 28, 1989 in Davao City; that he was blindfolded and a masking tape was placed on his mouth; and that subsequently, he was hit and mauled while a cellophane was placed on his head thus, causing him to loss consciousness.<sup>[20]</sup>

Appellant Itaas further testified that he affixed his signatures on his sworn statements dated August 29 and 30, 1989 in the presence of the CIS officers and that Atty. Filemon Corpus was not present during those two occasions. The said appellant admitted having sworn to the truth of the contents of his said sworn statements before the administering fiscal, but he disclosed that the CIS officers previously threatened him to admit the contents of the two sworn statements.<sup>[21]</sup>

Appellant Donato Continente testified that he was working as messenger with the U.P. Collegian, an official monthly publication of the University of the Philippines. He was walking on his way home inside the U.P. campus in Diliman, Quezon City from his workplace in Vinzon's Hall in the late afternoon of June 16, 1989 when four (4) persons blocked his way and simultaneously held his body and covered his mouth. He asked if they had any warrant of arrest but the persons simply boarded him inside a waiting car where he was handcuffed and blindfolded. Thereafter, they took his wallet that contained his NBI clearance, SSS, tax account number (TAN), identification card, two (2) pictures, and a typewritten certification from "SINAG" where he used to work.<sup>[22]</sup>

Appellant Continente learned that he was taken to Camp Crame in Quezon City only in the following morning when his blindfold was removed so that he could give his statement in connection with the killing of Col. James Rowe before a CIS Investigator whom he later identified during the trial as Virgilio Pablico. Appellant Continente affirmed the truth of his personal circumstances only which appear on his sworn statement dated June 17, 1989 but denied having made the rest of the statements embodied therein. The said appellant claimed that he initially denied any knowledge in the killing of Col. James Rowe but CIS Investigator Pablico maintained that he (Continente) knew something about it; that appellant Continente was alone with Investigator Pablico during the investigation; that he signed his sworn statement in the presence of Pablico and swore to the truth thereof before the administering fiscal for fear that something might happen to him while he was alone; that he signed the last page of his sworn statement first before signing the waiver of his constitutional rights upon arrival of Atty. Bonifacio Manansala whose legal services was engaged by the CIS Investigators; and that he had no opportunity to talk with Atty. Manansala who left after he (Atty. Manansala) signed, merely as witness, the first page of his sworn statement, which is the waiver of his constitutional rights.<sup>[23]</sup>

On rebuttal, prosecution witness Sgt. Reynaldo dela Cruz testified that he prepared and issued the receipt for the documents which he confiscated from appellant Continente on June 16, 1989; and that it is the standard operating procedure in the CIS to put a blindfold on an arrested suspected NPA member in order to withhold from him the view and location of the entrance, the exit and the terrain in the camp.<sup>[24]</sup>