

## SECOND DIVISION

[ G.R. No. 124076, January 21, 1997 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. GERRY SARABIA, ACCUSED-APPELLANT.**

### D E C I S I O N

**PUNO, J.:**

Newspaper business is hazardous to health. Nesino P. Toling, publisher and editor of the Panguil Bay Monitor is another court exhibit proving this truism. On April 14, 1991, an assassin buried a bullet at the back of Toling's head. The gun burst delisted him from the land of the living and converted him to another crime statistic.

This is an appeal by GERRY SARABIA from the Decision of the Court of Appeals<sup>[1]</sup> affirming his conviction for Murder by the Regional Trial Court of Ozamiz City,<sup>[2]</sup> but modifying the penalty imposed upon him to reclusion perpetua.

In an Information, dated April 19, 1991, NELSON VERDIDA, alias Commander Ramil, and appellant GERRY SARABIA were charged with the Murder of Nesino P. Toling, as follows:<sup>[3]</sup>

"That at or about 6:05 o'clock in the evening of April 14, 1991, inside the Panguil Bay Monitor Office, Port Road, City of Ozamiz, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring with and helping each other, with intent to kill and with treachery and evident premeditation, did then and there wilfully, feloniously and unlawfully shoot one Nesino P. Toling, as a result of which, said Nesino Toling died instantaneously.

"That the crime was committed with the aggravating circumstance of nighttime and by the use of an unlicensed firearm.

"CONTRARY to Article 248 of the Revised Penal Code."

Only appellant Gerry Sarabia was apprehended. His co-accused Nelson Verdida eluded arrest and remains at large. Thus, trial proceeded only against appellant.

The identity of appellant as the gunman and his presence at the scene of the crime were established by two (2) prosecution witnesses, viz: Elmo Galinato and Marivic Cuamag.

Eyewitness ELMO GALINATO, a resident of Tinago, Ozamiz City, was a security guard of the Republic Security Agency. He was assigned to guard the building of Universal Construction, located along-Rizal Avenue, Ozamiz City. Galinato was posted in the

middle of Rizal Avenue, in front of the Universal Construction building. Across the building stood Rose Pharmacy and beside it is the office of a local newspaper publication, Panguil Bay Monitor, where publisher-editor NESINO P. TOLING holds office.<sup>[4]</sup>

At about 6:25 p.m. of April 14, 1991, Galinato was standing in the middle of Rizal Avenue, about seven (7) meters away from the Office of the Panguil Bay Monitor newspaper. While at his post, he saw publisher-editor NESINO P. TOLING enter the newspaper office. Unknown to Toling, appellant GERRY SARABIA was behind him. After a couple of minutes, appellant opened the glass door of the office, took one step inside and immediately fired three (3) shots at Toling. Appellant ran to the direction of the adjacent Rose Pharmacy. He returned to Toling's office a few minutes later and fired another round of shots at the victim. Appellant then walked away, passed by Petron Gasoline Station, and fled towards the direction of the public market.<sup>[5]</sup>

Galinato recognized appellant whose face and features were already familiar to him prior to the shooting incident. He knew appellant as a security guard connected with the Scepter Security Agency. He used to see appellant in various places in the area. When appellant worked as security guard at the Rachel Emporium, Galinato was the security guard at the nearby Quality Store, about two (2) blocks away from where appellant worked.<sup>[6]</sup>

Galinato described appellant's apparel. At the time of the incident, he wore a white polo shirt, with black stripes and black pants. Galinato also noticed another man near the scene of the crime at the time of the shooting. However, he was not sure if the man was appellant's companion. He did not recognize this other man.<sup>[7]</sup>

The next day, April 15, 1991, Galinato met Pat. Bernardo Gallardo, Jr., the police officer who investigated the shooting incident. Pat. Gallardo showed him a picture of appellant and asked him to confirm whether appellant shot Toling. Initially apprehensive, Galinato told Pat. Gallardo to return the next day. Upon his return, Galinato narrated what he saw and identified appellant as the gunman.<sup>[8]</sup>

Another prosecution witness MARIVIC CUAMAG confirmed appellant's presence at the scene of the crime immediately before the shooting. Cuamag works as a secretary at the nearby E. de Leon Gunstore, housed in the same building as the office of the victim.<sup>[9]</sup>

On April 14, 1991, Cuamag reported for work at the gunstore. After her work ended at 6:00 p.m., Cuamag dropped by the office of Toling where her elder sister was employed. Toling was looking for her sister for he wanted her to do an errand. Cuamag volunteered to do the errand as her sister was not in the office. Toling requested her to buy some goods at the nearby Joy Mart grocery.<sup>[10]</sup>

Toling was handing her the list of articles to be purchased when Cuamag noticed appellant, wearing a white, striped polo shirt, standing by the glass door of the office. Appellant was about two (2) meters away from her. She thought appellant wanted to buy a copy of the Panguil Bay Monitor newspaper. When she got the shopping list and turned towards the door, appellant was no longer in sight. She left

the office, crossed Rizal Avenue and headed towards Joy Mart grocery. She heard a gunshot but initially did not pay any attention to it. However, when she reached the Allied Hardware and looked back at the direction of Toling's office, she saw several people milling around the office. She hurriedly returned to the office and found Toling dead.<sup>[11]</sup>

Toling was brought to the Medina General Hospital where he was declared dead on arrival. DR. LEWIS TAN issued the death certificate and found the cause of death as cardiopulmonary arrest due to the fatal gunshot wound the victim sustained at the back of the head.<sup>[12]</sup>

DR. PEDRITA ROSAURO, City Health Officer of Ozamiz City, conducted an autopsy of the victim's cadaver. She recovered a .38 caliber slug on the left back portion of the victim's head. The victim also sustained two (2) other gunshot wounds: one at the right heel of the foot and another at the left hand, near the wrist. Since the entrance of all these wounds were at the back, Dr. Rosauro opined that the assailant was behind the victim at the time of the shooting.<sup>[13]</sup>

PAT. BERNARDO GALLARDO, JR. testified on the results of his investigation.

At about 1:00 to 1:30 a.m., sometime on April 3 or 4, 1991, days before the shooting of newspaperman Nesino Toling, Pat. Gallardo, together with Lt. Tome and Sgt. Morera, all assigned at the Intelligence Operations at Cotta, 466th PC Company in Ozamiz City, were on surveillance, patrolling the area of Rizal Avenue, Ozamiz City. They came upon appellant standing near the office of Toling at Panguil Bay Monitor. Pat. Gallardo inquired what appellant was doing in the area at that unholy hour. Appellant replied he was waiting for someone. The police officers asked appellant to produce his residence certificate. They verified his identity and advised appellant to go home. When appellant left, Pat. Gallardo saw an ID picture of appellant on the ground which presumably fell out of appellant's wallet. Pat. Gallardo kept it, unaware that it would be of use to him later on.<sup>[14]</sup>

On April 14, 1991, the brutal slaying of Nesino Toling occurred. Tasked to investigate the crime, Pat. Gallardo repaired to the crime scene to look for eyewitnesses to the shooting. He interviewed ELMO GALINATO, a security guard assigned to guard the Universal Construction building located across the victim's office.<sup>[15]</sup> Galinato gave an eyewitness account of the shooting. Galinato declared he was familiar with the assailant's face, the latter being a security guard like him. When Pat. Gallardo showed a picture of appellant, Galinato identified him as the assailant.<sup>[16]</sup>

Pat. Gallardo also interviewed MARIVIC CUAMAG who placed appellant in the vicinity of the crime scene immediately prior to the shooting. Her description of the gunman tallied with appellant's features.<sup>[17]</sup>

Following up his lead, Pat. Gallardo looked for appellant. On April 18, 1991, at about 11:30 p.m., he saw appellant near the Northpole Eatery, at the corner of Rizal and Don Bernad Avenues. The eatery was right across Rose Pharmacy, a stone's throw away from the crime scene.<sup>[18]</sup>

Pat. Gallardo alighted from his jeep and immediately frisked appellant for weapons.

He then brought appellant to their headquarters for interrogation.

At the station, appellant denied responsibility for the killing. The police investigators found on appellant's left chest a tattoo of his alias name "Boy Bait" and an old gunshot wound on the stomach. Appellant said he sustained the gunshot wound when he was in Cebu.<sup>[19]</sup>

After the investigation, appellant was charged with the Murder of Toling and was temporarily detained at the headquarters. No bail was recommended.

On May 11, 1991, appellant escaped from his detention cell by sawing its wooden grills. Appellant also left a handwritten note to Pat. Gallardo threatening to take revenge for his capture. He signed the note with his alias name "Boy Bait."<sup>[20]</sup> The note, when translated in English, reads:

"Boy Abtik," (Pat. Gallardo) Don't worry about my escape as I am here, for if I am lucky, I will collect one by one (from) all the people who oppressed me. My firearm could never ever be taken as it is in the possession of my 3 brothers.

"Boy Bait"<sup>[21]</sup>

Accused did not remain free for long. The next day, May 12, 1991, he was recaptured by Lt. Tome, Sgt. Teves and other policemen at the boundary of Lapasan and Clarin, Misamis Occidental. He tried to escape but was shot at the leg by the police. During his confinement at the hospital, Pat. Gallardo visited appellant where the latter admitted that he was the one who wrote and left the threatening letter in his cell.<sup>[22]</sup>

For his exculpation, appellant foisted the defenses of denial and alibi. He claimed that on April 11, 1991, at about 10:30 a.m., he left for Miligan, Molave, Zamboanga del Sur, to visit his friend RUBEN BERONDO.<sup>[23]</sup> He went to Ruben's house in Purok Ipil-Ipil where he met Ruben's wife and son. He spent that night at Ruben's house. He stayed there for two (2) days or until April 12, 1991.<sup>[24]</sup>

In the morning of April 13, 1991, appellant left Ruben's house and proceeded to Sto. Niño, Mahayag, Zamboanga del Sur to visit his fiancée, the daughter of GERSON RAMAYRAT. When he reached Mahayag, he first dropped by the house of RAMON RAMAYRAT, a son of Gerson, who accompanied him to Gerson's house.<sup>[25]</sup>

The whole day of April 13, 1991, appellant, Ramon, Tikboy, Teodulo (nephews of Gerson), and several others had a drinking spree in Gerson's yard. The session lasted until late in the evening. He left Gerson's house after he told the latter that he would return to Ruben's house in Miligan where he was staying. On the way, however, appellant changed his mind. Ruben's house was quite far and he decided to spend the night at the nearby nipa hut of Gerson, along the creek.<sup>[26]</sup>

The next morning, April 14, 1991, appellant woke up at daybreak and returned to

Ruben's house in Miligan. When he reached the house at about 7:00 a.m., Ruben, who was about to dress up for church, invited him to come along. He declined for he wanted to return to Gerson's place.<sup>[27]</sup>

After taking his breakfast in Ruben's house, he changed his clothes and went back to Gerson's house. He arrived at about 10:00 a.m. Before he could reach Gerson's house, he was met by Ramon and his drinking buddies and was invited to join them again in their drinking spree. He acceded. Their group commenced drinking by the well, near Gerson's house. At noontime, food was sent to them. The group continued drinking until nighttime. He spent the night of April 14, 1991 at the house of Gerson.<sup>[28]</sup>

In the morning of April 15, 1991, appellant woke up early. He bade good-bye to Dolo, a nephew of Gerson, and informed him he would be returning to Ruben's house in Miligan.

In Ruben's house, he only saw Rolando, Ruben's son. Ruben and the other family members were still asleep. He packed up his things and left for Ozamiz City where he had lunch at the house of one Pat. Hemorsina.

On April 17, 1991, at about 11:00 p.m., appellant passed by the Northpole Eatery in Ozamiz City and was buying "balut" when Pat. Gallardo grabbed him. He asked Gallardo what he had done but the latter simply told him to explain at the headquarters. Before he boarded the police jeep, Gallardo took and kept his wallet which contained his ID pictures and money amounting to P485.00.

When they arrived at the 466th Company, Cotta headquarters, Pat. Gallardo reported to his commander, thus: "Sir, this might be the suspect of that one who was killed." Appellant had no inkling what Gallardo was talking about. He was investigated by the police. They informed him that he was a suspect in the killing of the editor of Panguil Bay Monitor. He denied knowledge of and participation in the crime and told the investigators he was in Miligan on the date and time of the incident.

During his detention, the police returned to him his money, less a hundred pesos. He registered his complaint with PC soldier EDWIN AREVALO who informed Pat. Gallardo about his grievance. Arevalo reprimanded Gallardo, saying: "Boy, why are you taking the money. If you are arresting a person without evidence, you better return the things you took from him." But Gallardo never returned his P100.00 pesos. During his detention, he spent all his money to buy food since there was no provision for meals for detention prisoners. He begged the jail guards to give him their leftover food. Finally, he requested that he be transferred to the City Jail where there was provision for meals. Unable to tolerate the inhumane condition in his cell, he escaped at dawn of May 11, 1991. He was recaptured the following day.<sup>[29]</sup>

Appellant was asked why prosecution witnesses ELMO GALINATO and MARIVIC CUAMAG pointed to him as the gunman. He opined they were brainwashed by Pat. Gallardo. He explained that he would not have stayed in Ozamiz City if he was involved in the shooting.<sup>[30]</sup> He denied knowing prosecution witnesses Galinato and Cuamag before they identified him as the gunman.<sup>[31]</sup>