

SECOND DIVISION

[G.R. No. 187731, September 18, 2013]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. SPO1
ALFREDO ALAWIG, ACCUSED-APPELLANT.**

D E C I S I O N

DEL CASTILLO, J.:

For final review is the November 3, 2008 Decision^[1] of the Court of Appeals (CA), affirming with modification the May 17, 2005 Decision^[2] of the Regional Trial Court (RTC), Branch 11, Manila, finding SPO1 Alfredo Alawig (appellant) and SPO2 Enrique M. Dabu (SPO2 Dabu) guilty beyond reasonable doubt of the crime of murder.

Factual Antecedents

Appellant, along with PO3 Romeo Ventinilla (PO3 Ventinilla), was initially charged with homicide for the killing of PO3 Miel de Ocampo Cafe (victim). Upon motion of Percelita Cafe (Percelita), the victim's mother,^[3] a reinvestigation of the case was conducted. Subsequently, the Deputy Ombudsman for the Military approved the filing of an Amended Information^[4] against appellant, PO3 Ventinilla together with SPO4 Ponciano Miraples (SPO4 Miraples), PO2 Armando de Vera (PO2 De Vera), SPO2 Dabu and PO2 Vivencio Corpuz (PO2 Corpuz). The Department of Justice accordingly moved for the admission of said Amended Information,^[5] which the RTC Manila, Branch 18 granted.^[6] The accusatory portion of the Amended Information reads as follows:

The undersigned Ombudsman Investigator, Office of the Deputy Ombudsman for the Military, hereby accuses SPO4 PONCIANO MIRAPLES, SPO1 ALFREDO ALAWIG, PO3 ROMEO VENTINILLA, PO2 ARMANDO DE VERA, SPO2 ENRIQUE DABU and PO2 VIVENCIO CORPUZ of the crime of MURDER, defined and penalized under Article 248 of the Revised Penal Code, committed as follows:

That on or about November 30, 1996, or for sometime subsequent thereto, in Marulas, Valenzuela, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused (SPO1 Alawig and PO3 VENTINILLA), both public officers, being then members of the Philippine National Police (PNP) Force assigned at the Valenzuela Police Station, armed with various firearms, with evident premeditation, treachery and with deliberate intent to kill, conspiring and confederating with their co-accused (SPO4 MIRAPLES, PO2 DE VERA, SPO2 DABU and PO2 CORPUZ), committing the offense in relation to their Office, did then and there willfully, unlawfully and feloniously shoot PO3 MIEL DE

OCAMPO CAFE, causing multiple gunshot wounds on the vital parts of his body which were the direct and immediate cause of his death, to the damage and prejudice of the latter's heirs.

Contrary to law.^[7]

SPO2 Dabu pleaded not guilty when arraigned on July 1, 1999 as did appellant when arraigned on July 29, 1999. SPO4 Miraples, PO2 De Vera and PO2 Corpuz were never apprehended and remain at large while PO3 Ventinilla met his violent death on February 27, 2001.^[8] Per letter^[9] of Police Chief Inspector Isidro C. Suyo, Jr. dated March 5, 2001, PO3 Ventinilla "who was tagged as member of the dreaded 'GAPOS GANG' was killed during the encounter with the [police] elements x x x at Rodriguez, Rizal." Accordingly, the case against PO3 Ventinilla was dismissed per Order^[10] dated January 31, 2005.

The prosecution presented as witnesses Dr. Fernando Mandapat (Dr. Mandapat), Dr. Valentin Bernales (Dr. Bernales), Aida Pascual (Pascual), MacGregor Reyes (Reyes), Percelita, Sr. Insp. Edison Lopez (Lopez), Joel Lester Valdez (Valdez) and Dr. Olga Bausa (Dr. Bausa), whose collective testimonies established the facts of this case as hereunder summarized.

In the early morning of November 30, 1996, the victim and Reyes went to a nearby market. Upon their return, Reyes left the victim at the latter's residence and came back at noon. He did not immediately enter the house as he noticed several policemen strategically positioned on the premises. He saw appellant and PO3 Ventinilla standing by the door shortly before entering the victim's house. He also saw SPO2 Dabu standing at the front gate while PO2 De Vera was on top of the septic tank. Standing at the main door was PO2 Corpuz. To avoid being noticed, Reyes used the alternative road and went inside the house through the back gate. From his position, he could hear the conversation among appellant, PO3 Ventinilla and the victim. The latter who just woke up was told to dress up and bring his firearm as he was summoned by SPO4 Miraples to join a police team in an operation regarding illegal drugs. After the group left the victim's residence, Reyes entered the house. While inside, he received a telephone call from the victim telling him, "*Pare wala pala kaming tatrabahuhin, ako pala ang tatrabahuhin, tulungan mo ako, sumundo ka ng tao na tutulong sa akin.*" But before Reyes could say anything, the telephone conversation was cut. Not long after, Reyes learned that the victim died from gunshot wounds in different parts of his body while inside the premises of Police Kababayan Center I in Doña Ata Subdivision, Marulas, Valenzuela City.

Dr. Mandapat, the physician on duty at the time the victim was brought to the Fatima Hospital (now Fatima Medical Center), conducted the initial post mortem examination. He noticed that the victim had no upper clothing and shoes when he was brought to the hospital by PO2 Corpuz. He identified the Medico-Legal Record^[11] and Medico-Legal Report^[12] that he prepared.

Dr. Bernales, a medico-legal officer from the National Bureau of Investigation (NBI), corroborated the initial medical findings of Dr. Mandapat. His autopsy report^[13] indicates that the victim sustained three gunshot wounds, contusions on the chest, subclavicular area and the forearm, lacerated wounds on the ear and posterior axillary line, and abrasions in post auricular and anterolateral.

Lopez was the Team Leader of the Scene of the Crime Operatives which investigated the shooting incident. The team took photographs and other physical evidence at the crime scene some of which were disturbed and tampered with. Lopez noticed a pool of blood leading to the door of the police station. Six spent shells taken from the office of SPO4 Miraples were placed on the floor by the members of the police station contingent when the team was about to take pictures. He also noticed that the holes on the wall were not caused by gunshots but by a concrete nail. He invited all the members of the police station contingent to undergo paraffin examination but only appellant and PO3 Ventinilla acquiesced to be paraffin tested. Both of them were positive for gunpowder nitrates.

Dr. Bausa, a medico-legal officer of the PNP Crime Laboratory, conducted a forensic examination on the blood-stained hat, face towel and T-shirt worn by the victim and submitted by the Valenzuela police. According to her, the T-shirt had no bullet holes on the areas where the victim was apparently shot and had no trace of blood.

Percelita testified that sometime in September 1996, the victim confided to her that he earned the ire of his superior and fellow police officers after he apprehended a drug pusher in Valenzuela. She likewise recalled that on November 28, 1996, the victim told her, "*Inay[,] ang Valenzuela ay bulok*" as some high-ranking officials were involved in a drug syndicate. The victim even told her that some unknown persons were following him from time to time. As a result of her son's death, she testified that she suffered moral damages and actual damages amounting to P104,000.00. She also spent P221,000.00 as attorney's fees.

On the other hand, the version of appellant and SPO2 Dabu as summarized by the CA is quoted hereunder:

On November 30, 1996, at around 1:00 o'clock in the afternoon, accused-appellant Alawig, accused PO3 Ventinilla and PO2 De Vera were dispatched by their Precinct Commander SPO4 Miraples to ARTY Subdivision to respond to a report involving illegal drugs. However, they were not able to proceed to the assigned operation because SPO4 Miraples directed them to go to Gumamela Street to investigate on a reported trouble in the area. When they arrived at the area, the reported trouble was already over, thus, they proceeded to the house of the victim which was also within the vicinity and also to inquire on the trouble which occurred there. They reached the house of the victim while the latter was playing dart with a certain Tomas Beroy. The victim invited the police officers to get inside the house but only the accused-appellant Alawig and Ventinilla entered. The victim admitted to them that he had a quarrel with his wife which caused him to shoot the thermos bottle. Thereafter, the victim joined them in reporting back to the police station in order to explain the alleged trouble that took place in the area where he also resided. The victim brought his armalite rifle and .45 pistol and boarded the owner-type jeep of Ventinilla. When they were about to leave, Ventinilla noticed that the victim was holding a plastic sachet containing "shabu". There, Ventinilla said to the victim, "*Matagal ka nang tinatrabaho ng DILG Parak.*" Upon arrival at the police station, the accused-appellant Alawig went to a store to buy cigarette and, when he returned, he saw the victim and the accused Ventinilla having a heated

argument. During the occurrence, Dabu and De Vera left the station to respond to a reported illegal gambling while the victim and Ventinilla went inside the station.

Inside the station, the victim made a telephone call and thereafter the heated argument between the victim and Ventinilla resumed. Alawig could see the events from outside the station where he was seated. He saw the victim [kick] his armalite rifle and [point] it at Ventinilla which the latter tried to impede by holding the end part of the weapon and pointed it upward. At the same time, Ventinilla kicked the table towards the victim which caused the latter to fall down to his knees. At that moment, the victim fired his armalite rifle and, in retaliation thereto, Ventinilla shot the victim x x x several times. Thereafter, Alawig told Ventinilla to stop[,] after which the latter left the scene.^[14]

x x x x

For his part, Dabu testified that he was not among those who fetched the victim at his house. He remained at the police station to wait for De Vera before they would respond to a reported illegal gambling somewhere in Pasong Balete Hills. Immediately after De Vera arrived, Dabu left the station with De Vera. They apprehended three (3) persons in their operation and brought them to their station. Upon their arrival at the station, Dabu learned that a shooting incident transpired between the victim and Ventinilla while they were away. Due to the incident, Dabu released the persons he apprehended in an illegal gambling pursuant to an order of his superior, SPO4 Miraples.

Ruling of the Regional Trial Court

On May 17, 2005, the RTC convicted appellant and SPO2 Dabu of murder qualified by treachery. The RTC also considered the killing of the victim as attended by the aggravating circumstance of evident premeditation. Accordingly, they were sentenced to suffer the penalty of death.

The dispositive portion of the RTC Decision reads:

WHEREFORE, judgment is hereby rendered in this case, finding accused Alfredo Alawig and Enrique M. Dabu guilty beyond reasonable doubt of the crime of Murder qualified by treachery. There being attendant in the commission of the offense the aggravating circumstance of evident premeditation without any mitigating circumstance present, the greater penalty shall be applied (Art. 63, par. 1, RPC). Under Art. 48 of the Revised Penal Code as amended by R.A. 7659, the maximum penalty of the crime of Murder is death. Accordingly, both accused Alawig and Dabu, who stand trial, are hereby sentenced to suffer the penalty of death.

Accused Dabu and Alawig are likewise ordered to pay jointly and severally the heirs of the victim, Miel Cafe, compensatory damage in the amount of P50,000.00, actual damages in the amount of P325,000.00, moral damages in the amount of P50,000.00 and exemplary damages in the amount of P25,000.00

SO ORDERED.^[15]

Considering, however, the failure of SPO2 Dabu to appear during the promulgation of the Decision, the RTC issued an Order^[16] directing the issuance of a warrant of arrest. Thereafter, SPO2 Dabu filed a Motion for Reconsideration^[17] of the RTC Decision but the same was denied in an Order^[18] dated October 25, 2005.

Ruling of the Court of Appeals

SPO2 Dabu then filed with the CA a Compliance (With Omnibus Motion to (a) Give Due Course to the Appeal, (b) Lift and Set Aside Warrant of Arrest and (c) Allow Accused to Post Bail.^[19] However, in a Resolution^[20] dated March 22, 2006, the CA denied due course to SPO2 Dabu's appeal. Hence, the CA's disposition was limited to the appeal interposed by appellant.

The CA agreed with the factual presentation of the prosecution and discredited the version of the defense. On November 3, 2008, the CA promulgated its Decision affirming the RTC Decision but reduced the penalty from death to *reclusion perpetua*, viz:

WHEREFORE, in view of the foregoing premises, the assailed decision of the Regional Trial Court, Branch 11, in Manila rendered on May 17, 2005 in Criminal Case No. 99-170722 finding the accused-appellant guilty of the crime of murder is hereby **AFFIRMED** by us with the **MODIFICATION** that the penalty of death imposed is reduced to *reclusion perpetua*.

SO ORDERED.^[21]

Hence, this appeal

Issues

In his Brief,^[22] appellant contends that in affirming his conviction, the CA -

1. X X X erred in its factual finding that [APPELLANT] claimed self-defense despite evidence showing that his defense was total denial.
2. X X X erred in not resolving the following issues raised to it on appeal from the trial court, to wit:
 - A. WHETHER X X X THE TRIAL COURT ERRED IN HOLDING THAT THE GUILT OF THE [APPELLANT] WAS PROVEN BEYOND REASONABLE DOUBT BASED ON CIRCUMSTANTIAL EVIDENCE
 - i. whether x x x the trial court erred in ruling that there exists sufficient circumstantial evidence to prove that the [APPELLANT] conspired in killing the victim
 - ii. whether x x x the trial court erred in ruling that there was motive on the part of the [APPELLANT]