

## THIRD DIVISION

[ G.R. NO. 157221, March 30, 2007 ]

**PEOPLE OF THE PHILIPPINES, APPELLEE, VS. CESAR GALVEZ,  
APPELLANT.**

### DECISION

**AUSTRIA-MARTINEZ, J.:**

For review before this Court is the Decision<sup>[1]</sup> of the Court of Appeals (CA) in CA-G.R. CR No. 18255 dated March 30, 2001, which affirmed the Decision<sup>[2]</sup> of the Regional Trial Court (RTC) Isabelita, Basilan finding the accused-appellant Cesar Galvez (Galvez), guilty of Murder, but modifying the penalty of the RTC from a sentence of "seventeen (17) years, four (4) months and one (1) day as minimum to twenty (20) years as maximum" to *reclusion perpetua*.

The facts are as follows:

At around 11 o'clock in the evening of July 27, 1991, Danilo Perez, Rosalio Enojarda, Noel Cugal, Ricardo Francisco and Wilfredo Rellios, took a break from making copra to eat leftover dinner inside the copra kiln in the farm of Perez in Matarling, Lantawan, Basilan. When Enojarda stood up from the circle where they were eating to drink water, shots rang out and Enojarda fell to the ground shouting "*Dan ya tupa comigo*" (Dan, I am hit). The rest of the group took cover, crawling to different directions. After the attack, Rellios reported the incident to the barangay captain and they brought Enojarda's dead body to his family.<sup>[3]</sup>

On May 28, 1992, an Information was filed against Cesar Galvez (Galvez), a member of the Philippine National Police (PNP) for Murder, which reads:

That on or about the 27th day of July, 1991, and within the jurisdiction of this Honorable Court, viz. at Matarling, Municipality of Lantawan, Province of Basilan, Philippines, the above named accused, armed with an M16 armalite rifle, with treachery and evident premeditation, and with intent to kill, did then and there willfully, unlawfully and feloniously assault, attack and shoot one Rosalio Enojarda with the said M16 armalite rifle, thereby inflicting gunshot wound on the body of the latter which caused his death.<sup>[4]</sup>

The prosecution presented evidence showing that: after Enojarda fell, the rest of the group took cover and Rellios while in a crawling position, saw Galvez about 5 meters away holding an armalite rifle and firing at their direction; Rellios also saw that Galvez had companions but did not recognize them as well as the firearms they carried because they were approximately nine meters away;<sup>[5]</sup> Perez, also crawled and hid in the bushes about 5 meters away; when the firing stopped, one of the attackers passed by about two meters from where Perez was hiding and because the

moon was bright, he recognized Galvez, his cousin, who was wearing a fatigue uniform and armed with an armalite rifle; he also saw that Galvez had three armed companions but did not recognize them nor the firearms they were carrying because they were about nine meters from Galvez.<sup>[6]</sup>

Galvez put up denial and alibi as his defenses. He testified that he was staying at his father-in-law's house on July 27, 1991 and drank *tuba* at around 10:30 p.m. at a nearby store. He went home and slept with his wife soon after.<sup>[7]</sup> To corroborate his testimony, he presented SPO2 Danilo Ramillano, a visitor at his father-in-law's house and Wilhelmina Espinosa, a *sari-sari* store owner.<sup>[8]</sup> He also presented Athena Elisa Anderson, Document Examiner and Forensic Analyst of the PNP Crime Laboratory of Region 9, Zamboanga City, who testified that the paraffin test conducted on both his hands showed that there was no nitrate present;<sup>[9]</sup> and Police Inspector Lemuel Caser, Ballistic Examiner, who testified that the shells found at the scene of the crime were not fired from the firearm issued to Galvez.<sup>[10]</sup>

After trial, the RTC rendered its Decision dated February 27, 1995 with the following findings:

From the foregoing facts as well as from the records of this case, this Court finds the following facts to be undisputable, to wit:

1) That at the late night of July 27, 1991, Rosalio Enojarda, while making copra in the coconut land of Danilo Perez at Matarling, Lantawan, Basilan, was shot to death by one of the four (4) men. How many gunshot wounds he suffered and what part of his body was hit by the gunfire, the evidence is found wanting.

2) That a day before the incident and on the date of the incident which was July 27, 1991, the accused Cesar Galvez has not fired any firearms.

x x x

3) That the five (5) empty shells of armalite rifle...allegedly found by Barangay Captain Inocente Manicap from the scene of the crime and later turned over to PFC Samuel Omoso, the Police Investigator of this case, did not come from the M16 armalite rifle with Serial No. 117460, the gun issued to the accused Cesar Galvez. (citations omitted).<sup>[11]</sup>

Further, the trial court found that the testimonies of the prosecution witnesses, Rellios and Perez, were credible and trustworthy as there was no motive to perjure themselves; that the testimony of defense witness SPO2 Ramillano was full of loopholes; and that the testimony of the store owner was insufficient to disprove the presence of the accused at the scene of the crime.<sup>[12]</sup>

The RTC concluded:

xxx since this accused, Cesar Galvez, has not fired his M16 armalite rifle on that night of July 27, 1991, and those five (5) empty shells were not fired from his armalite, then **xxx the bullet that hit and instantly killed Rosalio Enojarda on that night of July 27, 1991 at the copra**

**kiln of Danilo Perez came from the gun fired by any of the three (3) unidentified persons who were the companions of the accused, Cesar Galvez at the night of the incident xxx.**<sup>[13]</sup>  
(emphasis supplied)

Despite the fact that the Information failed to allege conspiracy and the aggravating circumstances of nocturnity and armed band, the RTC still convicted Galvez of murder based on conspiracy since Galvez was seen by two witnesses at the scene of the crime carrying a firearm together with his unidentified armed companions.<sup>[14]</sup> The trial court also held that the offer of Galvez to have the case settled out of court is an indication of his guilt.<sup>[15]</sup>

The RTC then disposed of the case as follows:

WHEREFORE, all factual and circumstantial matters surrounding the commission of the crime, being carefully and meticulously examined and studied, this Court finds the accused SPO2 Cesar Galvez, a member of the Philippine National Police GUILTY beyond reasonable doubt as principal in committing the crime of Murder as alleged in the Information and which crime is defined and penalized under Art. 248 of the Revised Penal Code, but considering his good military records after the commission of the crime, hereby sentences him to suffer an imprisonment of SEVENTEEN (17) YEARS, FOUR (4) MONTHS and ONE (1) DAY as minimum, to TWENTY (20) YEARS as maximum, which is the minimum period of Reclusion Temporal in its maximum period to death. And to indemnify the heirs of the late Rosalio Enojarda, the amount of P50,000.00 as moral damages and to pay the Court the amount of P500.00 as judicial costs and other accessory penalties attached to the penalty of Reclusion Temporal.

And further this accused is hereby stripped of all the military ranks he now hold [sic] in the Armed Forces of the Philippines.

And upon the promulgation of this decision, the accused shall immediately be committed to the Provincial Jail where the Provincial Warden is directed to immediately transfer him to the National Penitentiary at San Ramon Penal Colony at Zamboanga City for commitment thereat.

And the property bail bond he has posted for his provisional liberty is hereby ordered cancelled and its pertinent papers returned, upon receipt to the bondsman.<sup>[16]</sup>

Galvez appealed the case to the CA, docketed as CA-G.R. CR No. 18255, which rendered its Decision on March 30, 2001 affirming his guilt but modifying the penalty to be imposed, thus:

WHEREFORE, with the *MODIFICATION* that appellant *CESAR GALVEZ* is hereby sentenced to *reclusion perpetua*, the decision appealed from is hereby *AFFIRMED* in all other respects.<sup>[17]</sup>

The CA held that the RTC erred in holding Galvez criminally liable based on conspiracy when such fact was not alleged in the Information. However, it still found Galvez guilty of Murder.<sup>[18]</sup> The CA reasoned that: the negative results of the paraffin and ballistic tests do not negate the possibility that Galvez used another gun in shooting the victim; the eyewitnesses of the prosecution identified Galvez as the perpetrator if not one of the perpetrators of the crime; alibi, which was offered by Galvez, is the weakest of all defenses and cannot prevail over positive identification; the offer of Galvez to the wife of the victim to have the case settled is also a strong indication of Galvez's culpability; and treachery was adequately established as the attack was sudden, unexpected and did not accord the victim an opportunity to defend himself.<sup>[19]</sup> The CA further held that since there was no mitigating circumstance, the proper penalty should be *reclusion perpetua*.<sup>[20]</sup>

Galvez filed a Motion for Reconsideration<sup>[21]</sup> which the CA denied in its Resolution dated August 21, 2001, stating that it was a mere rehash of the arguments already addressed in the decision.<sup>[22]</sup>

The entire records of the case were forwarded to this Court pursuant to Section 13, Rule 124 of the Rules of Criminal Procedure. On April 8, 2003, the Court issued a Resolution<sup>[23]</sup> accepting the case; committing the accused to the Davao Prison and Penal Farm; and informing the accused and the Solicitor General that they may file additional briefs with this Court.<sup>[24]</sup>

In his Appellant's Brief, Galvez argued that the trial court erred:

#### I

... IN HOLDING THAT (HE) THE ACCUSED-APPELLANT IS LIABLE FOR MURDER FOR THE DEATH OF ROSALIO ENOJARDA ON JULY 27, 1991 DESPITE ITS EXPRESS FINDINGS THAT THE ACCUSED-APPELLANT DID NOT FIRE HIS RIFLE ON THAT FATAL NIGHT AND THAT THE BULLET THAT HIT AND KILLED ROSALIO ENOJARDA COULD HAVE BEEN FIRED FROM ANY OF THE GUNS OR RIFLES BELONGING TO ANY OF THE THREE UNIDENTIFIED PERSONS WHO WERE NOT CHARGED NOR INDICTED TOGETHER WITH THE ACCUSED IN THE SAME CRIMINAL INFORMATION IN QUESTION.

#### II

... IN HOLDING THAT DANILO PEREZ AND WILFREDO RELIOS, WHILE IN CRAWLING POSITION WHOSE CHESTS WERE ALMOST TOUCHING THE GROUND AND UNDER CONDITIONS DESCRIBED BY THEM, HAD SEEN THE ACCUSED-APPELLANT ARMED WITH M16 ARMALITE RIFLE IN THE NIGHTTIME, OF 27 JULY 1991 DESPITE DANILO PEREZ' [sic] POSITIVE ASSERTION THAT IT WAS IMPOSSIBLE OF HIS (SIC) TO IDENTIFY THE ACCUSED WHEN ASKED TO DEMONSTRATE IN OPEN COURT IN THE MANNER AND CIRCUMSTANCE NARRATED BY HIM.<sup>[25]</sup>

In his Supplemental Appellant's Brief, Galvez further claims that it was seriously erroneous:

I.

...TO CONCLUDE THAT THERE WAS CONSPIRACY BETWEEN ACCUSED-APPELLANT AND THE OTHER MALEFACTORS NOT INCLUDED IN THE PRESENT CASE.

II.

...TO BE SELECTIVE IN APPRECIATING MATTERS NOT INCLUDED IN THE INFORMATION, MORE SO THE THEORY OF CONSPIRACY AGAINST ACCUSED-APPELLANT, THERE BEING NO OTHER PERSONS CHARGED IN THE PRESENT CASE.

III.

...TO FIND THE ACCUSED-APPELLANT GUILTY OF MURDER UNDER CIRCUMSTANCES FAR DIFFERENT FROM THE INFORMATION, IN EFFECT DENYING ACCUSED-APPELLANT [THE] RIGHT TO BE INFORMED OF THE NATURE AND CAUSE OF ACCUSATION AGAINST HIM.

IV.

...TO GIVE CREDENCE TO THE TESTIMONIES OF THE TWO ALLEGED EYE WITNESSES WHOSE DECLARATIONS WERE CLEARLY BELIED DURING THEIR CROSS EXAMINATION.

V.

...NOT TO CONSIDER THE DEFENSE OF ALIBI OF ACCUSED-APPELLANT.

VI.

...TO MAKE UNSUBSTANTIATED, BASELESS PRESUMPTIONS AND CONCLUSIONS IN A CRIMINAL CASE WHERE THE INNOCENCE OF THE ACCUSED IS PRESUMED.<sup>[26]</sup>

Galvez also filed an Addendum to Supplemental Appellant's Brief adding that:

VII

THE HONORABLE COURT OF APPEALS SERIOUSLY ERRED IN DISREGARDING THE RESULTS OF THE PARAFFIN AND BALLISTIC TESTS AND IN ASSUMING THAT THE ACCUSED-APPELLANT SHOT THE DECEASED USING AN M16 RIFLE OTHER THAN THE ONE ISSUED TO HIM.

<sup>[27]</sup>

Galvez contends that: the degree of proof required in criminal cases is proof beyond reasonable doubt because an accused is always presumed to be innocent unless proven otherwise;<sup>[28]</sup> when circumstances yield two or more inferences, one of which is consistent with the presumption of innocence and the other compatible with