

SECOND DIVISION

[G.R. No. 133442, March 23, 2004]

**PEOPLE OF THE PHILIPPINES, APPELLEE, VS. RODRIGO
ALMAZAN, APPELLANT.**

D E C I S I O N

CALLEJO, SR., J.:

This is an appeal from the Decision^[1] of the Regional Trial Court of Bangued, Abra, Branch 2, convicting the appellant Rodrigo Almazan of murder and sentencing him to suffer an indeterminate penalty of fourteen (14) years, ten (10) months and twenty (20) days of *reclusion temporal*, as minimum, to eighteen (18) years of *reclusion temporal*, as maximum. On appeal, the Court of Appeals (CA) rendered its Decision^[2] on February 27, 1998 affirming the decision of the trial court but increasing the penalty to *reclusion perpetua*.^[3] The CA certified the case to this Court pursuant to Section 13, Rule 124 of the Revised Rules on Criminal Procedure. The Court accepted the case.

The appellant was charged with murder in an Information, the accusatory portion of which reads as follows:

That on or about the 14th day of May 1989, at around 9:00 o'clock in the morning, at Barangay Calaba, in the municipality of Bangued, province of Abra, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill, with treachery and evident premeditation, and while armed with a firearm (unrecovered), did then and there, willfully, unlawfully and feloniously shoot one LORETO APOLINAR several times, hitting him on the head and other parts of his body, which caused his death shortly thereafter, to the damage and prejudice of the heirs of the victim.^[4]

The appellant was duly arraigned, assisted by counsel, and entered a plea of not guilty.^[5]

The Case for the Prosecution

The first witness of the prosecution was Felimar Apolinar who testified that her husband Loreto Apolinar worked as a weaver.^[6] In the morning of May 14, 1989, she and Loreto were taking a bath at the Abra River, Barangay Calaba, about 45 meters away from their house. She also washed clothes. By 9:00 a.m., they decided to go home. From the river, they trekked by a narrow trail. She carried a basin by her side full of washed clothes. Loreto, who was naked from waist up, was ahead of her by 9 meters.^[7] Suddenly, Rodrigo (Odit) Almazan, who was armed with a foot-long firearm,^[8] jumped from the hill at Loreto's right side and landed slightly at a distance of about a meter from him. Almazan then aimed his gun at Loreto and shot

him. The muzzle of the gun was about 2 feet from Loreto. Although already mortally wounded and bloodied, Loreto instinctively fled towards the house of spouses Eriberto and Francisca Sequerra, which was 45 meters away from the place where the appellant first shot Loreto.^[9] Almazan, still armed with his gun, pursued Loreto.^[10] Felimar followed the two, shouting and pleading in the Ilocano dialect to Almazan, "*Odit, Odit, Odit, don't shoot my husband!*"^[11] Almazan ignored her. Loreto managed to enter the house of the Sequerras.^[12] Almazan barged inside the house and saw Loreto crawling toward the *sawali* wall. Felimar managed to reach the first step of the stairs to the said house but was shocked when Almazan shot Loreto for the second time. Almazan then went out of the house and, upon seeing Felimar at the foot of the stairs, told her, "*You are also one (sic), you want that I will kill you!*"^[13] Before Felimar could reply, Almazan fled from the scene. Felimar ran to the house of their neighbor, Patrolman Juanito Blanes of the Bangued Police Station.^[14] She reported the shooting to him and sought help. She then lost consciousness and came to her senses only after about 30 minutes.^[15] The next day, May 15, 1989, she gave her sworn statement to Pat. Antonio Carpio.^[16]

Patrolman Juanito Blanes testified that on May 14, 1989, between 8:00 a.m. and 9:00 a.m., he was on board a tricycle on his way to his house at Barangay Calaba when he met Almazan.^[17] When he arrived home, he heard two gunshots. After a couple of minutes, Francisca Sequerra arrived in his house, pleading, "Brother, help us because Loreto Apolinar entered our house and he was shot by Rodrigo Almazan."^[18] Blanes took his pistol and left his house to go to the house of the Sequerras.^[19] On his way, he met Felimar who also pleaded to him saying, "Please brother, help us because Rodrigo Almazan killed my husband."^[20] When he arrived at the Sequerras' house, Loreto was already dead.^[21] He sent someone to report the matter to the Bangued Police Station. Momentarily, Corporal Catalino Buenafe and Lt. Esteban Pangda arrived and conducted an on-the-spot investigation.^[22] They also took pictures of the crime scene.^[23] One of the pictures showed Loreto's head protruding through the *sawali* wall of the house.^[24]

Francisca Sequerra testified that on May 14, 1989 at 9:00 a.m., she was washing clothes in the Abra River.^[25] She was with Monching Bayle, Rening Sequerra and some children.^[26] She also saw Loreto and even joked with him.^[27] However, she did not see Felimar in the river on that occasion.^[28] As she was climbing up to the trail on her way home, Loreto, who was then behind her, pleaded for her help. She saw Loreto bloodied all over. Afraid for her life, she did not help Loreto.^[29] The latter passed by her and ran towards their (Sequerras') house. Instead of going home, Francisca opted to proceed to the place where there were several people.^[30] Thereafter, she no longer knew what happened to Loreto.

On July 11, 1989, or almost two weeks from the killing, Francisca gave a statement to Staff Sergeant (S/Sgt.) Edgardo C. Dacquel of the 123rd PC Company/Police District I, Camp Juan Villamor, Bangued, Abra. In her statement, she stated that when she was about to reach her house from the river, he heard gunfire and heard Loreto pleading to her, "I am shot, please help me, sister!" Loreto repeated his plea to her as he passed by her and fled to her house. She noticed that Loreto was bloodied all over. When she arrived home, her mother-in-law, Maxima Sequerra,

instructed her to report the matter and seek help from the police. She left the house to report the matter to Patrolman Juanito Blanes. Aside from her mother-in-law, Francisca's daughter, Maria Sequerra, and her children were also in the house. She did not know who shot Loreto.^[31] She testified, on cross examination, that when she reported the matter to Blanes, she did not tell the policeman that it was Almazan who shot Loreto.^[32]

The prosecution presented S/Sgt. Dacquel who identified his Report dated August 31, 1989 on the killing of Loreto by Almazan which S/Sgt. Dacquel submitted to the Provincial Commander/Police Superintendent, Abra PC/INP Command. S/Sgt. Dacquel recommended that:

10. ... Criminal Complaint for MURDER be filed against C2C Rodrigo Almazan PC before the competent military court.

11. ... C2C Rodrigo Almazan PC be summarily discharged from the military service, effective upon approval so that his case will be tried in the merits of the civil court. ^[33]

The Provincial Commander concurred with the foregoing recommendation. The order discharging Almazan from the service was approved by the appropriate officer of the military on November 23, 1989.^[34]

Dr. Herminio B. Venus, Medical Specialist I of the Abra Provincial Hospital, testified that he conducted an autopsy on Loreto's cadaver. He, thereafter, prepared an Autopsy Report containing the following findings:

DIAGNOSIS:	MULTIPLE GUNSHOT WOUND HEAD AND CHEST THRU AND THRU
CADAVER	- Lividity and Rigidity Length – 160 centimeter Weight – 60 kilos

EXTERNAL FINDINGS:

1. Gunshot wound. Chest lateral thru and thru POE 8 holes measuring in centimeters in diameter 5 centimeters apart 8 centimeters from the right axilla, oval in shape, inverted edges with contusion collar around the wounds directed obliquely penetrating the thoracic cavity existing POEX at the right chest anterior 4 holes measuring 1.5 centimeters in diameter everted edges 3 centimeters apart below the right nipple.

2. Presence of powder burn at the right shoulder, right thumb and index finger.
3. Gunshot wound head 5 centimeters above the right ear POE measuring 4 centimeters in diameter, oval in shape, inverted edges with contusion collar around the wound, directed slight downward penetrating cranial cavity exiting POEX at left neck with 4 holes 3 centimeters apart everted edges.

INTERNAL FINDINGS:

1. Presence of 1000 cc. of soft clotted blood inside the thoracic cavity.
2. Presence of cylindrical tunnel at the right lung middle, upper and lower lobe with blood contents and echymotic border.
3. Laceration of the liver
4. Laceration of the arch of aorta
5. Laceration of the brain substance soft clotted blood inside the brain.
6. Pillars and core were extracted.

CAUSE OF DEATH:

CARDIAC
TAMPONADE
BRAIN
INJURY,
INTRA
CRANIAL,
INTERNAL
AND
EXTERNAL
HEMORRHAGE
MASSIVE,
SECONDARY
TO MULTIPLE
GUNSHOT
WOUND HEAD
AND CHEST
THRU AND
THRU^[35]

He testified that Wound No. 1 was "thru and thru" and fatal. Powder burns were present on the victim's right shoulder. He managed to hold the gun as indicated by the presence of powder burns on his right thumb and index finger. Wounds Nos. 1 and 2 could have been caused by a shotgun or a buckshot.

In his Brief submitted to the CA, the appellant summarized his testimony and those of his witnesses, thus:

1. *CAPTAIN RODOLFO RIVERA*

Commanding Officer of the 135th PC Co, stationed in the Municipality of La Paz, Abra, he testified that he personally supervised and check[ed] the physical attendance and disposition of all members of his command; that accused herein, Rodrigo Almazan was a member of his command with the rank of Constable 2d Class; his physical presence and performance of duty had been duly accounted for like any other individual member of his unit; and based on official documents, duly and daily prepared, and thereafter, officially submitted to higher headquarters, i.e., Morning Reports (Exhibit "3;" Daily Disposition and location of Troops (Exhibit "4," "5," "6," and "7"); and Guard Detail (Exhibit "9"), accused Almazan was physically present inside camp, and actually performed his duty as guard from 13 May 1989 to 14 May 1989.

He executed an affidavit (Exhibit "8"), confirming the fact that accused performed his normal garrison duties, *e.g.*, attending daily formation, camp guarding, and had participated in combat operations against dissidents in the Cordillera mountain towns of Daguioman and Malibcong from May 14, 1989, up to the time he was placed under arrest on November 07, 1989.

2. *T/SGT WILFREDO CACHO*

The Company First Sergeant of the 135th PC Co, he testified that he conducted daily physical check-up of the men personally, supervised the performance of duty of each and every member thereof; that their physical presence were reflected in official documents submitted to higher headquarters which he, himself, or his clerk, prepares such as the Morning Reports, Daily Disposition and Location of Troops, Guard Details, etc; that based on these documents, accused Almazan, as a bona fide member of the command, was duly accounted for as physically present inside the camp at La Paz, Abra for the period: May 11, 12, 13, 14, 1989 (Exhibits "4," "5," "6," and "7," respectively).

3. *T/SGT EDMUNDO LORENZO*

Designated as Sergeant of the Guard for the period – May 13-14, 1989, he personally prepared the Guard Detail (Exhibit "9"), as follows:

1st Shift (2-hour guarding
or a total of 6 hours-May
13).
5:00 P.M. – 7:00 P.M. –
1st relief – Carmelo