

EN BANC

[G.R. No. 137347, March 04, 2004]

**PEOPLE OF THE PHILIPPINES, APPELLEE, VS. PO3 FERDINAND
FALLORINA Y FERNANDO, APPELLANT.**

D E C I S I O N

CALLEJO, SR., J.:

For automatic review is the Decision^[1] of the Regional Trial Court of Quezon City, Branch 95, convicting appellant PO3 Ferdinand Fallorina y Fernando of murder for the killing of eleven-year-old Vincent Jorojoro, Jr. while the latter was flying his kite on top of a roof. The court a quo sentenced the appellant to suffer the death penalty.

The accusatory portion of the Information charging the appellant with murder reads:

That on or about the 26th day of September 1998, in Quezon City, Philippines, the said accused, with intent to kill, by means of treachery and taking advantage of superior strength, did then and there, wilfully, unlawfully and feloniously attack, assault and employ personal violence upon the person of VINCENT JOROJORO, JR. y MORADAS, a minor, eleven (11) years of age, by then and there, shooting him with a gun, hitting him on the head, thereby inflicting upon him serious and mortal wound which was the direct and immediate cause of his death, to the damage and prejudice of the heirs of the said offended party.

CONTRARY TO LAW.^[2]

Upon arraignment on October 20, 1998, the appellant, with the assistance of counsel, pleaded not guilty. Thereafter, trial ensued.

Case for the Prosecution^[3]

Eleven-year-old Vincent Jorojoro, Jr. was the third child of Vicente and Felicisima Jorojoro. The family lived at Sitio Militar, Barangay Bahay Toro, Project 8, Quezon City. Vincent, nicknamed "Hataw," was a grade three pupil whose education was sponsored by the Spouses Petinato, an American couple, through an educational foundation.^[4]

The appellant was an officer of the Philippine National Police detailed in the Traffic Management Group (TMG) based in Camp Crame, Quezon City, but was on detached service with the Motorcycle Unit of the Metropolitan Manila Development Authority (MMDA).

At about 2:30 p.m. of September 26, 1998, Vincent asked permission from his

mother Felicisima if he could play outside. She agreed.^[5] Together with his playmate Whilcon "Buddha" Rodriguez, Vincent played with his kite on top of the roof of an abandoned *carinderia* beside the road in Sitio Militar, Barangay Bahay Toro. Beside this *carinderia* was a basketball court, where fourteen-year-old Ricardo Salvo and his three friends, nicknamed L.A., Nono and Puti, were playing *backan*, a game of basketball.

Ricardo heard the familiar sound of a motorcycle coming from the main road across the basketball court. He was nonplussed when he looked at the person driving the motorcycle and recognized the appellant. Ricardo knew that the appellant abhorred children playing on the roof of the *carinderia* and berated them for it. His friend Ong-ong had previously been scolded by the appellant for playing on the roof.

Ricardo called on Vincent and Whilcon to come down from the roof. When the appellant saw Vincent and Whilcon, the former stopped his motorcycle and shouted at them, "*Putang inang mga batang ito, hindi kayo magsibaba d'yan!*" After hearing the shouts of the appellant, Whilcon immediately jumped down from the roof.^[6] Vincent, meanwhile, was lying on his stomach on the roof flying his kite. When he heard the appellant's shouts, Vincent stood up and looked at the latter. Vincent turned his back, ready to get down from the roof. Suddenly, the appellant pointed his .45 caliber pistol^[7] towards the direction of Vincent and fired a shot. Vincent was hit on the left parietal area. He fell from the roof, lying prostrate near the canal beside the abandoned *carinderia* and the basketball court.^[8]

Whilcon rushed to help Vincent up but was shocked when he saw blood on the latter's head. Whilcon retreated and left his friend.^[9] The appellant approached Vincent and carried the latter's hapless body in a waiting tricycle and brought him to the Quezon City General Hospital. Vincent was pronounced dead on arrival.

Meantime, word reached Vincent's parents that their son was shot and brought to the hospital. They rushed to the hospital, only to see their son's already lifeless body. The appellant was nowhere to be found.

Dr. Ravell Ronald R. Baluyot of the Medico-Legal Division of the National Bureau of Investigation (NBI) conducted an autopsy where he made the following findings:

Cyanosis, lips and nailbeds.

Abrasion, 7.0 x 2.0 cms., right arm, middle third, postero-lateral aspect.

Contused-abrasion, 14.5 x 2.5 cms., postero-lateral chest wall, right side.

Gunshot Wound, Entrance, 3.0 x 0.8 cms., roughly ovaloid, with irregular edges, abrasion collar widest postero-inferiorly, located at the head, left parietal area, 9.0 cms. above and 8.0 cms. behind the left external auditory meatus, directed forward upward and from left to right, involving the scalp, fracturing the left parietal bone (punched-in), lacerating the left and right cerebral hemispheres of the brain, fracturing the right parietal bone (punched-out), lacerating the scalp, making an Exit wound, 3.3 x 1.0 cms., stellate with everted and irregular edges, 12.0 cms. above and 2.0 cms. in front of the right external auditory

meatus.

Intracranial hemorrhage, subdural and subarachnoid, extensive, bilateral.

Scalp hematoma, fronto-parietal areas, bilateral.

Visceral organs, congested.

Stomach, one-fourth (1/4) filled with partially digested food particles.

CAUSE OF DEATH: GUNSHOT WOUND, HEAD.^[10]

Dr. Baluyot testified that the victim died from a single gunshot wound in the head. The bullet entered the left upper back portion of the head (above the level of the left ear)^[11] and exited to the right side.^[12] Dr. Baluyot signed Vincent's certificate of death.^[13]

At about 3:00 p.m., SPO2 Felix Pajarillo and Police Inspector Abelardo P. Aquino proceeded to the scene of the shooting but failed to find the victim and the appellant. They proceeded to the Quezon City General Hospital where they heard that the victim had died. They returned to the crime scene and recovered an empty shell from a .45 caliber gun.^[14]

On September 28, 1998, Major Isidro Suyo, the Chief of the MMDA Motorcycle Unit to which the appellant was assigned on detached service, reported to the Sangandaan Police Station that the appellant had not reported for duty.^[15] At 2:10 p.m. of September 29, 1998, Police Senior Superintendent Alfonso Nalangan, the Regional Director of the PNP-TMG, NCR, surrendered the appellant to the Sangandaan Police Station together with his .45 caliber pistol bearing Serial No. AOC-38701.^[16]

Meantime, upon the urging of Vicente Jorojoro, Ricardo was brought to the Department of Justice where he was enrolled under its Witness Protection Program. He gave his sworn statement to NBI Special Agent Roberto Divinagracia on September 29, 1998.^[17] On the same date, P/Insp. Abelardo Aquino wrote the Chief of the PNP Crime Laboratory Examination Unit requesting for the ballistic examination of the .45 caliber pistol with Serial No. AOC-38701 and the empty shell of a .45 caliber gun found at the scene of the shooting.^[18] Before noon on September 30, 1998, Divinagracia arrived at the station and turned over two witnesses, Raymond Castro and Ricardo Salvo. He also turned over the witnesses' sworn statements.^[19] On October 2, 1998, on orders of the police station commander,^[20] Pajarillo took pictures of the crime scene, including the *carinderia* and the roof with a bullet hole as part of the office filing.^[21] He did not inform the prosecution that he took such pictures, nor did he furnish it with copies thereof. However, the appellant's counsel learned of the existence of the said pictures.

On October 5, 1998, P/Insp. Mario Prado signed Firearms Identification Report No. FAIB-124-98 stating that:

FINDINGS:

Microscopic examination and comparison of the specimen marked "FAP"

revealed the same individual characteristics with cartridge cases fired from the above-mentioned firearm.

CONCLUSION:

The specimen marked "FAP" was fired from the above-mentioned caliber .45 Thompson Auto Ordnance pistol with serial number AOC-38701.^[22]

Vincent's family suffered mental anguish as a result of his death. As evidenced by receipts, they spent P49,174 for the funeral.^[23]

Case for the Appellant

The appellant denied shooting Vincent. He testified that at about 1:30 p.m. of September 26, 1998, Macario Ortiz, a resident of Sitio San Jose, Quezon City, asked for police assistance; Macario's brother-in-law was drunk and armed with a knife, and was creating trouble in their house. The appellant's house was located along a narrow alley (*eskinita*) perpendicular to the main road. It was 200 meters away from Macario's house.^[24] Responding to the call, the appellant took his .45 service revolver, cocked it, put the safety lock in place and tucked the gun at his right waistline. He brought out his motorcycle from the garage and slowly negotiated the bumpy alley leading to the main road. Macario, who was waiting for him at the main road, called his attention to his revolver which was about to fall off from his waist. The appellant got distracted and brought his motorcycle to the right side of the road, near the abandoned *carinderia* where he stopped. As he stepped his right foot on the ground to keep himself from falling, the appellant lost his balance and slipped to the right. At this point, the revolver fell to the ground near his foot and suddenly went off. Bystanders shouted, "*Ano yon, ano yon, mukhang may tinamaan.*" He picked up his gun and examined it. He put the safety latch back on and tucked it at his right waistline. He then told Macario to wait for a while to check if somebody was really hit. He went near the abandoned *carinderia* and saw Vincent sprawled to the ground. He picked up the bloodied child, boarded him on a tricycle on queue and instructed its driver, Boy Candaje, to bring the boy to the hospital.^[25] On board the tricycle were Jeffrey Dalansay and Milbert Doring.

The appellant rode his motorcycle and proceeded to his mother's house in Caloocan City but did not inform her of the incident. He then called his superior officer, Major Isidro Suyo, at the Base 103, located at Roces Avenue, Quezon City. The appellant informed Major Suyo that he met an accident; that his gun fell and fired; and, that the bullet accidentally hit a child. He also told his superior that he might not be able to report for work that day and the following day. He assured his superior that he would surrender later. He then went to Valenzuela City to the house of his friend PO3 Angelito Lam, who was a motorcycle unit cop. The appellant stayed there for three days. He also visited friends during that time.

On September 29, 1998, he went to the office of Major Suyo and surrendered his .45 caliber pistol. Major Suyo accompanied and turned over the appellant to the commanding officer at Camp Crame, Quezon City. The appellant was subjected to a neuro and drug test. He stated that the results of the drug test were negative. The appellant was then referred to the Sangandaan Police Station for investigation.^[26] The pictures^[27] of the crime scene were given to him by Barangay Tanod Johnny

Yaket, shown in one of the pictures pointing to a bullet hole. The appellant's testimony was corroborated in *pari materia* by Macario Ortiz.

Leonel Angelo Balaoro, Vincent's thirteen-year-old playmate, testified that at 1:30 p.m. of September 26, 1998, he was playing basketball at Barangay Bahay Toro, at the basketball court along the road beside the chapel. With him were Ricardo, Puti and Nono. Vincent was on the rooftop of the *carinderia* with Whilcon. While Puti was shooting the ball, an explosion ensued. He and Ricardo ran beside the chapel near the basketball court. He looked back towards the basketball court and saw the appellant, about 15 meters away from the canal, holding the prostrate and bloodied Vincent. He did not see the appellant shoot Vincent. He did not report what he saw to the police authorities. He was ordered by his father to testify for the appellant. He also testified that his mother was related to Daniel, the appellant's brother.

On January 19, 1999, the trial court rendered judgment convicting the appellant of murder, qualified by treachery and aggravated by abuse of public position. The trial court did not appreciate in favor of the appellant the mitigating circumstance of voluntary surrender. The decretal portion of the decision reads:

WHEREFORE, judgment is hereby rendered finding the accused PO3 Ferdinand Fallorina y Fernando GUILTY beyond reasonable doubt of the crime of Murder defined in and penalized by Article 248 of the Revised Penal Code, as amended by Republic Act No. 7659, and in view of the presence of the aggravating circumstance of taking advantage by the accused of his public position (par. 1, Art. 14, Revised Penal Code), is hereby sentenced to suffer the penalty of DEATH.

The accused is hereby ordered to indemnify the heirs of the late Vincent Jorojoro, Jr. the amounts of P49,174.00, as actual damages; P50,000.00, as moral damages; P25,000.00, as exemplary damages; and, P50,000.00, as death indemnity.

The accused is to pay the costs.

The .45 caliber pistol, service firearm (Exh. "R") of the accused, shall remain under the custody of the Court and shall be disposed of in accordance with the existing rules and regulations upon the finality of this decision.^[28]

The appellant assigned the following errors for resolution:

1. THE COURT A *QUO* SERIOUSLY ERRED IN NOT GIVING DUE CREDENCE TO RELEVANT PHYSICAL EVIDENCE, WHICH IF CONSIDERED COULD HAVE ALTERED THE CONCLUSIONS ARRIVED AT BY THE COURT AND THE OUTCOME OF THE CASE.
2. THE COURT A *QUO* SERIOUSLY ERRED BY OVERSTEPPING THE LINE OF JUDGING AND ADVOCACY, AND GOING INTO THE REALM OF SPECULATION, PATENTLY DEMONSTRATING BIAS AND PARTIALITY.
3. THE COURT A *QUO* ERRED IN GIVING UNDUE CREDENCE TO THE TESTIMONY OF RICARDO SALVO, ALLEGED PROSECUTION