

FIRST DIVISION

[G.R. No. 133004, May 20, 2004]

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. GENEROSO MAGBANUA Y AHIT, APPELLANT.

D E C I S I O N

AZCUNA, J.:

Appellant Generoso Magbanua y Ahit appeals from the January 22, 1998 Decision of the Regional Trial Court of Davao City, Branch 10, in Criminal Case No. 27-442-92, convicting him of murder.

The information filed against appellant reads:

That on or about June 12, 1992, in the City of Davao, Philippines, and within the jurisdiction of this Honorable Court, the above-mentioned accused, with treachery and evident premeditation, armed with a gun and with intent to kill, willfully, unlawfully and feloniously attacked, assaulted and shot at close range one Remegio Diaz, thereby inflicting upon him mortal wounds which caused his instantaneous death.^[1]

As appellant's whereabouts were initially unknown, the warrant of arrest was served only on June 13, 1996, four years from the time the crime was allegedly committed.

^[2] When arraigned on July 11, 1996, appellant pleaded not guilty.^[3] Trial thereafter ensued.

The prosecution relies on the eyewitness accounts of Narciso Balucos and Narciso Rellin. Medico-legal officer Dr. Napoleon dela Peña and Salustiana Diaz, the victim's mother, also testified for the prosecution.

Narciso Balucos,^[4] barrio captain of Dumalag, Baguio, Davao City, testified that on June 12, 1992, at around 3:30 p.m., he was gathering his copra on a bridge at Gumalang. Helping him were the victim and Narciso Rellin. Appellant, together with his more than ten companions, later approached and congratulated Balucos for having been chosen as Purok Leader. Shortly thereafter, appellant talked with hostility to the victim concerning the "killing in Lacson, Davao City," a case which involved appellant and the victim's cousins. Suddenly, appellant pulled out a handgun from his waist and fired a shot at the creek. Seconds after, while face to face with each other, appellant shot the victim twice in the face, first at the left cheek, then at the forehead. Balucos recalled that the muzzle of the gun was only about five inches away from the face of the victim, who was then standing an arm's length away from appellant. He further narrated that after the gunshots, he and Rellin ran away out of fear for their lives.

Narciso Rellin,^[5] also an eyewitness, testified in corroboration of the testimony of

Balucos. From a distance of four meters, he witnessed appellant shoot at the victim twice in the face at close range. After the second shot at the victim, he ran off together with Balucos. He added that the incident happened so fast that the victim did not have a chance to run for safety.

Dr. Napoleon dela Peña,^[6] the medico-legal officer who conducted the post-mortem examination of the victim, testified on his findings. The Necropsy Report^[7] stated, follows:

NAME :	REMIGIO DIAZ	AGE : 36 yrs. old
ADDRESS :	Gumalang, Baguio District	
PLACE OF AUTOPSY :	Angel Funeral Parlor	
DATE OF AUTOPSY :	June 13, 1992	

NECROPSY REPORT

1. Gunshot wound, entrance 1 cm. circumference, occiput, left trajecting medially downward with exit 2 cm. circumference maxillary right.
2. Gunshot wound entrance 1 cm. circumference occiput right trajecting medially downward left with exit 2 cm. circumference maxillary right [sic].

CAUSE OF DEATH:

Shock due to massive hemorrhage secondary to gunshot wounds.

(Sgd.) Napoleon dela
Peña, M.D.
Medical Officer VI

When asked in court to explain his findings as stated above, Dr. dela Peña testified that the first injury had an entry wound behind the left ear and an exit wound above the right jaw, equidistant to the lower end of the right ear and to the chin. The second injury had an entry wound behind the right ear and exit wound above the right jaw,^[8] equidistant to the lower end of the left ear and to the chin. Contrary to the eyewitnesses' claim, he testified that it appears that the victim was shot from behind, and that the muzzle of the gun was more than two feet away from the victim. He declared that either of the wounds could have caused the victim's instantaneous death as both appeared to be fatal.

He, however, admitted that he issued the Necropsy Report only in 1996 when he received a *subpoena*, four years after he conducted the autopsy. The contents of his report were lifted from the findings he jotted on a page of his notebook, which the defense submitted as evidence.^[9]

Salustiana Diaz,^[10] the mother of the victim, testified that she and her husband spent for the funeral expenses of the victim. She also recalls seeing the victim before the embalmment with gunshot wounds on his right cheek, left cheek, and

forehead. As proof, she showed a close-up picture^[11] of the face of the victim while lying inside a coffin. The picture was taken in her presence by an unidentified photographer, upon the request of the victim's family during the wake. It showed a wound on the victim's forehead in between the eyebrows, and a sutured wound on the right cheek. She testified that she obtained the picture from the victim's son, Richard Diaz.

Testifying for the defense, on the other hand, were Richard Diaz, Jesusa Ba, Paquito Calimpas, and appellant.

As its first witness, the defense presented the sixteen-year-old son of the victim, **Richard Diaz**.^[12] To refute the claim that the victim also suffered an injury on the forehead, he presented another picture^[13] of the victim taken from the foot of the coffin at a distance from the photographer. The victim's injuries were not visible from the picture. The young Diaz testified that the picture he gave his grandmother Salustiana Diaz was a copy of the same picture he presented in evidence. He declared that no other picture was taken of his father during the wake, and denied recognizing the dead man on the close-up picture earlier presented by his grandmother.

The defense next presented **Jesusa Ba**,^[14] the victim's mother-in-law, who has been supporting the victim's widow and children. She mainly alleged that it was she who spent for the burial expenses of the victim, in contradiction to Salustiana Diaz's claim in her testimony.

Appellant **Generoso Magbanua**^[15] testified to present his version of the events that transpired on June 12, 1992. At 3:00 p.m., he and his friend Paquito Calimpas were at the store in Centro Gumalang. A group of around ten of their friends passed by and invited the two of them to congratulate Narciso Balucos for having won the election as purok leader. On the way to Balucos's residence, they saw the latter on the bridge in Gumalang, gathering copra with Narciso Rellin and the victim. When appellant approached Balucos, the rest of the group went to the other side of the bridge, except Calimpas and Rellin, who remained near him and Balucos. When he reached out for a handshake, Balucos parried his hands and remarked that appellant campaigned for the opposing candidate. Appellant then replied that Balucos was not being sport. He then heard a gunshot coming from the other end of the bridge. Out of fear for his life, he ran towards his house which was 400 meters away from the bridge. A few seconds after, while running, he heard another gunshot. He recalls seeing his companions also flee the scene, but failed to see who fired the shot or whether anyone was hit. It was only the next day that he learned of the victim's death and the news that he was being suspected as the assailant, from passersby who were unknown to him.

On cross examination, he admitted that he was then the team leader of the Civilian Home Defense Force in the area, although he added that he was not in active service at the time, for he was then under suspension. Having no gun with him at the time of the incident, he decided to run away for his own safety. When he reached home, he never went out until the next day, for fear of his life.

Appellant further related that he was surprised that the two eyewitnesses testified against him after initially assuring him that they were going to execute affidavits of

desistance. When he confronted them about it, they allegedly said that they were forced to testify by the then trial prosecutor Isaac Robillo, who threatened them with imprisonment. He added that his relationship with Prosecutor Robillo was not good, as he had a previous misunderstanding with a certain Dr. Acosta, who happened to be the prosecutor's brother-in-law.

Paquito Calimpas,^[16] one of appellant's companions at the time of the occurrence, testified in corroboration of appellant's narration of the shooting incident. After hearing the gunshot coming from the opposite side of the bridge, which was 15 meters away from where he and appellant stood, he ran away in panic without looking back. Just like appellant, he only heard the two gunshots, but did not see who fired the shots or who got hit.

For rebuttal, the prosecution presented **Isaac Robillo**,^[17] the trial prosecutor who took charge at the initial stages of the trial, to refute appellant's claim that he coerced the eyewitnesses to testify. He admits that Balucos and Rellin at first executed affidavits of desistance, wherein they manifested that they are "no longer willing to testify in this case" after the reconciliation of the families of the victim and appellant. However, the two witnesses later decided to testify after each receiving a subpoena, and after Robillo cautioned them that lying under oath may subject them to prosecution for perjury. Robillo denied any personal interest in the case, and claimed that the only Dr. Acosta he knows is the brother of his sister-in-law.

Finding the testimonies of the eyewitnesses worthy of belief, the court *a quo* convicted appellant of the crime charged. It dismissed the medico-legal's contradictory findings as unreliable and appellant's version as incredible. It also ruled that the crime was attended by treachery, which qualified the killing to murder. It thus sentenced appellant, as follows:

WHEREFORE, this Court finds the accused Generoso Magbanua y Ahit, alias Jun, guilty beyond reasonable doubt of the crime of murder for the killing of Remegio Diaz and hereby sentences him to reclusion perpetua, and orders him to indemnify the heirs of Remegio Diaz for his death in the amount of P50,000.00 as well as to pay the costs.

SO ORDERED.^[18]

Hence, the instant appeal. Appellant questions his conviction on the following grounds:

First Assignment of Error

THE TRIAL COURT ERRED IN NOT FINDING THAT THE TESTIMONIES OF THE TWO ALLEGED EYEWITNESS[ES] ARE IRRECONCILABLY INCONSISTENT AND CONTRADICTORY BY THEMSELVES AND WITH THEIR AFFIDAVITS, MAKING THEM SIMPLY INCREDIBLE.

Second Assignment of Error

THE TRIAL COURT ERRED IN HOLDING THAT THE TESTIMONIES OF THE TWO ALLEGED EYEWITNESSES OF THE PROSECUTION ON THE GUNSHOT WOUNDS INFLICTED ON THE VICTIM [WHICH ARE] CONTRADICTORY TO THE FINDINGS AND TESTIMONY OF THE OTHER

PROSECUTION WITNESS (THE GOVERNMENT DOCTOR WHO CONDUCTED THE EXAMINATION AND AUTOPSY ON THE VICTIM'S CADAVER), PREVAIL OVER SAID FINDINGS AND TESTIMONY OF THE DOCTOR.

Third Assignment of Error

THE TRIAL COURT ERRED IN NOT FINDING THAT THE EVIDENCE OF THE PROSECUTION IS INSUFFICIENT TO SHOW THE GUILT OF THE ACCUSED BEYOND REASONABLE DOUBT.

Fourth Assignment of Error

THE TRIAL COURT ERRED IN CONVICTING THE ACCUSED OF THE CRIME OF MURDER INSTEAD OF ACQUITTING AND ABSOLVING HIM FROM CRIMINAL AND CIVIL LIABILITY.^[19]

Under his second and third assignments of error, appellant points out that the testimonies of the alleged eyewitnesses regarding the victim's injuries and the respective positions of the victim and appellant during the shooting are contradictory to the medico-legal findings of the government doctor. Such discrepancy, he claims, sufficiently raises reasonable doubt on the veracity of the eyewitnesses' testimonies.

Indeed, the Court observes the apparent inconsistency between the eyewitnesses' testimonies and the medico-legal findings. According to Balucos, he saw appellant get shot at the left cheek and at the forehead. Rellin corroborated this by saying that he saw appellant shoot at the victim's face twice. These assertions were supported by the testimony of the victim's mother, who submitted a picture of the victim showing injuries on the cheek and forehead. The medico-legal findings, however, disclose the victim's injuries to be above the left and right jaws, and none at the forehead. Moreover, while the eyewitnesses categorically declared that they saw appellant shoot the victim frontally at close range, Dr. dela Peña concluded that the assailant shot the victim from behind, from a distance of more than two feet.

A closer examination at how the medico-legal officer arrived at his findings discloses a plausible explanation to the contradiction between the doctor's conclusions and the testimonies of the eyewitnesses. The trial court observed that the Necropsy Report is undated and appears to have been newly issued. When confronted about this, the government doctor explained that it was his practice not to issue immediately necropsy reports because he was always busy in his department. He admitted that it was only upon the receipt of a subpoena in 1996 that he issued the report, the contents of which he copied from a notebook on which he originally recorded his findings. As noticed by the trial court, the particular page of his notebook which indicated the aforesaid findings bore unexplained alterations. To wit, in the description of the entry wound of the first gunshot injury, it appears that the words "occiput" and "maxillary" were initially interchanged. The same alteration appears in the description of the exit wound. Also, the recorded conclusions on the notebook failed to state anything about the presence of powder burns, which would have indicated the distance of the gun from the victim. On the witness stand, however, Dr. dela Peña categorically declared that there was no indication of powder burns, presumably from his bare recollection of an autopsy that he conducted four years ago.

Moreover, the Court notes that the Necropsy Report failed to mention anything