

EN BANC

[G.R. No. 138386-87, May 20, 2004]

**PEOPLE OF THE PHILIPPINES, APPELLEE, VS. EUFROCINO^[1]
AGUDEZ Y ASIONG @ "OPRING", RONILO AGUDEZ Y COCOY @
"DANILO", RICARDO AGUDEZ Y COCOY @ "OLONG", FERNANDO
AGUDEZ Y COCOY (AT LARGE), PAQUITO KATIMPO Y INGGO @
"KITOY" (AT LARGE), ACCUSED.**

**EUFROCINO AGUDEZ Y ASIONG @ "OPRING", RONILO AGUDEZ Y
COCOY @ "DANILO", RICARDO AGUDEZ Y COCOY @ "OLONG",
ACCUSED-APPELLANTS.**

DECISION

AUSTRIA-MARTINEZ, J.:

Before us for automatic review is the consolidated decision^[2] of the Regional Trial Court (RTC) of Kalibo, Aklan, Branch 2, in Criminal Cases Nos. 5176 and 5177 convicting appellant Eufrocino Agudez and his two sons, appellants Ronilo Agudez and Ricardo Agudez of two counts of murder and sentencing each of them to suffer the supreme penalty of death for each count.

Appellants were apprehended by police authorities on June 27, 1998. They were charged with murder in two separate Informations both dated June 29, 1998 together with Fernando Agudez and Paquito Katimpo, son and son-in-law of appellant Eufrocino, respectively.

The accusatory portions of the amended Informations, docketed as Criminal Cases Nos. 5176 and 5177, read as follows:

Criminal Case No. 5176

The undersigned Third Assistant Provincial Prosecutor of Aklan hereby accuses EUFROCINO AGUDEZ Y ASIONG alias "OPRING", RONILO AGUDEZ Y COCOY alias "DANILO", RICARDO AGUDEZ Y COCOY alias "OLONG", all of Sitio Binitinan, Barangay Oquendo, Balete, Aklan, but presently detained at the Municipal Jail of Balete, Aklan, FERNANDO AGUDEZ Y COCOY and PAQUITO KATIMPO Y INGGO alias "KITOY" both of Sitio Binitinan, Barangay Oquendo, Balete, Aklan and both at large, of the crime of MURDER, committed as follows:

That on or about the 27th day of June, 1998, in the morning, in Sitio Panukduka, Barangay Oquendo, Municipality of Balete, Province of Aklan, Republic of the Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping one another, while armed with long shotguns, with intent to kill,

with evident premeditation, treachery and use of superior strength, did then and there willfully, unlawfully and feloniously attack, assault and shoot one DOMINADOR CASTRO, thereby inflicting upon the latter mortal wounds, to wit:

1. GSW 1 cm. in diameter coursing downward and anteriorly at the occipital region.
2. GSW 1 cm. in diameter at the anterior aspect of the left wrist.
3. GSW 1 cm. in diameter at the left scapular region.
4. GSW 1 cm. in diameter coursing downward and anteriorly at the interscapular area.
5. GSW 1 cm. in diameter just below the right scapular region.
6. GSW 1 cm. in diameter right lower back.
7. GSW 1 cm. in diameter 2 cm. lateral to injury #6.
8. GSW 1 cm. in diameter coursing downward and anteriorly right buttock.
9. GSW 1 cm. in diameter posterior aspect of the distal 3rd of the right thigh.

as per Post Mortem Examination Report issued by Dr. Alfredo B. Villaruel, Rural Health Physician, Balete, Aklan, hereto attached and made an integral part of this information, which wounds directly caused the death of the said DOMINADOR CASTRO.

That as a result of the criminal acts of the accused, the heirs of the deceased suffered actual and compensatory damages in the amount of P50,000.00.

CONTRARY TO LAW.^[3]

Criminal Case No. 5177

The undersigned Third Assistant Provincial Prosecutor of Aklan hereby accuses EUFRICINO AGUDEZ Y ASIONG alias "OPRING", RONILO AGUDEZ Y COCOY alias "DANILO", RICARDO AGUDEZ Y COCOY alias "OLONG", all of Sitio Binitinan, Barangay Oquendo, Balete, Aklan, but presently detained at the Municipal Jail of Balete, Aklan, FERNANDO AGUDEZ Y COCOY and PAQUITO KATIMPO Y INGGO alias "KITOY" both of Sitio Binitinan, Barangay Oquendo, Balete, Aklan and both at large, of the crime of MURDER, committed as follows:

That on or about the 27th day of June, 1998, in the morning, in Sitio Panukduka, Barangay Oquendo, Municipality of Balete, Province of Aklan, Republic of the Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping one another, while armed with long shotguns, with intent to kill, with evident premeditation, treachery and use of superior strength, did then and there willfully, unlawfully and feloniously attack, assault and shoot one MAMERTO C. NALANGAN, thereby inflicting upon the latter mortal wounds, to wit:

1. GSW 1 cm. in diameter just above the right scapular region.
2. GSW 1 cm. in diameter 2 cm lateral to injury #1.

3. GSW 1 cm. in diameter posterior aspect of the proximal 3rd of the right arm coursing downward and medially.
4. GSW 1 cm. in diameter at the interscapular area.
5. GSW 1 cm. in diameter coursing downward and anteriorly at the infrascapular area.
6. GSW 1 cm. in diameter at the level of midspinal line and 7th rib.
7. GSW 1 cm. in diameter at the right lower back.
8. GSW 1 cm. in diameter coursing downward and anteriorly at the middle 3rd of left thigh.
9. GSW 1 cm. in diameter at the distal 3rd of left thigh.
10. GSW 1 cm. in diameter at posterior aspect of the proximal 3rd of left leg.

as per Post Mortem Examination Report issued by Dr. Alfredo B. Villaruel, Rural Health Physician, Balete, Aklan, hereto attached and made an integral part of this information, which wounds directly caused the death of the said MAMERTO NALANGAN.

That as a result of the criminal acts of the accused, the heirs of the deceased suffered actual and compensatory damages in the amount of P50,000.00.

CONTRARY TO LAW.^[4]

Upon arraignment, appellants Eufrocino, Ronilo and Ricardo pleaded not guilty to the charges against them. The cases were consolidated and joint trial ensued.

Accused Fernando and Katimpo remain at large.

The prosecution evidence established the following facts:

On the basis of the prosecution evidence, the following transpired on June 27, 1998: About 5:00 in the morning, Adoracion Castro, together with her husband Dominador Castro and their nephew Mamerto Nalangan, left their house at Barangay Oquendo, Balete, Aklan. Travelling by foot, they headed for Barangay Ganzon, Jamindan, Capiz to hear mass at the Seventh Day Adventist Church. Around 6:30, they reached Jal-O river which was located at Sitio Panukduka, Barangay Oquendo, Balete, Aklan. As they were crossing the river, one after the other, Adoracion suddenly heard a gunshot. She immediately turned around as she was walking ahead of Dominador and Mamerto. She then saw Dominador looking at her, biting his lips. She shouted at Dominador and told him to "duck to the ground". Immediately thereafter, she heard two shots and saw Dominador and Mamerto fall into the water. She went to the aid of Dominador and held him in her arms. While holding her husband, Adoracion looked up and saw the five accused with their bodies, from the waist up, protruding from fox holes dug in the ground. They were about ten armslength away from Adoracion and Dominador and they were all armed with shotguns locally known as "pugakhang". They immediately ran and scampered to different directions. Adoracion then told Dominador that she would go back home to ask for help. However, before leaving her husband and nephew Mamerto, she noticed that both of them were no longer breathing. She immediately informed her sons, Edwin and Efren, of the deaths of Dominador and Mamerto. ^[5] At 11:30 in the morning, Efren and a certain Barangay Captain Dandoy reported the shooting

incident to the police authorities in Balete, Aklan. The chief of police of Balete then formed a team which proceeded to the crime scene and conducted an investigation.

[6] After finishing their investigation, the police authorities retrieved the bodies of Dominador and Mamerto and brought them to Sitio Gubang, Barangay Guadalupe where the bodies were examined.[7] It was around 6:00 in the evening that Adoracion again saw the body of her husband at Sitio Gubang. There she was asked to identify a person who was earlier apprehended by the police. Adoracion identified appellant Ricardo Agudez as one of the persons who shot her husband and nephew.

[8] Around 7:00, appellants Eufrocino and Ronilo were also apprehended by police authorities.[9] The following morning, Adoracion identified them as among those who killed her husband and nephew.[10]

Adoracion further testified that the five accused shot at her husband and nephew because they were in the belief that it was her son who had earlier killed a son of appellant Eufrocino.[11]

Appellants' main defense is alibi. They, together with two other witnesses, Jenie Zaulda and Nelson Cerezo, took the witness stand to prove their defense. The gist of their testimonies taken together is as follows:

Around 6:30 in the morning of June 27, 1998, Jenie went to the house of barangay kagawad Nelson Cerezo located at Barangay Julita, Libacao, Aklan. Upon arriving at Nelson's house, he saw appellants Eufrocino and Ricardo getting ready for work. Jenie is acquainted with them as he has seen them stay in the house of Nelson starting in the month of June 1998. Jenie found out that Nelson was not at home because he is attending the wake of a certain Iluminado Sagales. Since Jenie wanted to talk to Nelson, he decided to go to the wake. Appellants Ricardo and Eufrocino went out of the house with him.[12] Jenie proceeded to the wake but Eufrocino and Ricardo went to Sitio Gaob, Barangay Julita, Libacao, Aklan to construct a pigpen at the house of a certain Romeo Zamora.[13] Upon arriving at the wake, Jenie saw Nelson and appellant Ronilo playing "tong-its", a card game. After briefly conversing with Nelson, Jenie went home.[14] On the other hand, appellants Ricardo and Eufrocino arrived at the house of Zamora at 8:00 of the same morning and worked there until 3:00 in the afternoon of the same day. After they finished constructing the pigpen, they went home. They arrived at the house of Nelson at 4:30 of the same afternoon.[15] Meanwhile, Nelson and appellant Ronilo arrived home earlier at 2:00 in the afternoon, having stayed at the wake since 9:00 in the evening of the previous day, January 26, 1998.[16] It was in Nelson's house that police authorities apprehended appellant Ricardo in the afternoon of June 27, 1998. [17] Later in the evening of the same day, appellants Eufrocino and Ronilo were also arrested by policemen at the house of Nelson. [18]

On January 14, 1999, the trial court rendered a decision, the dispositive portion of which reads:

WHEREFORE, premises considered, this Court finds the accused Eufrocino Agudez y Asiong, Ronilo Agudez y Cocoy and Ricardo Agudez y Cocoy, GUILTY beyond reasonable doubt of two (2) counts of MURDER under Article 248 of the Revised Penal Code, as amended by R.A. 7659, and

hereby imposes upon each of them the penalty of DEATH for each count, and further ORDERS them to jointly and severally pay

1) To the legal heirs of the victim Dominador Castro:

- a) The amount of P50,000.00 for the victim's death; and
- b) The amount of P159,960 for the victim's loss of earning capacity.

2) To the legal heirs of the victim Mamerto C. Nalangan:

- a) The sum of P50,000.00 only for the victim's death.

And lastly, for the time being, let these cases before this Court against the accused Fernando C. Agudez and Paquito I. Katimpo who, as of this moment, are still at large, be sent to the Archives, to be reopened only upon their apprehension by the authorities.

With costs.

SO ORDERED.^[19]

Hence, herein automatic review pursuant to Article 47 of the Revised Penal Code, as amended.

Appellants raise the following Assignment of Errors:

I

THE TRIAL COURT ERRED IN FINDING THE ACCUSED GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF MURDER.

II

THE TRIAL COURT ERRED IN APPRECIATING TREACHERY AND EVIDENT PREMEDITATION AGAINST THE ACCUSED

III

THE TRIAL COURT ERRED IN APPRECIATING BAND AND UNINHABITED PLACE AGAINST THE ACCUSED."^[20]

On the Credibility of Prosecution Eye-witness

In their first assigned error, appellants assail the credibility of prosecution witness Adoracion Castro who is the lone eyewitness to the crime. They claim that Adoracion could not have clearly seen the perpetrators of the crime because of the presence of foliage around the holes where the assailants hid. However, SPO2 Jerry Custodio testified that from the vantage point where the holes were located, the cadavers of the victims could still be seen despite the presence of plants in the adjoining area.^[21] Hence, while it may be true that Adoracion did not have a clear line of vision