

## EN BANC

**[ G. R. No. 137407, January 28, 2003 ]**

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
WILLERIE AVENDAÑO, ACCUSED-APPELLANT.**

### DECISION

#### **QUISUMBING, J.:**

On automatic review is the decision<sup>[1]</sup> dated January 29, 1999 of the Regional Trial Court of San Jose, Occidental Mindoro, Branch 46, in Criminal Case No. R-4227. Appellant Willerie Avendaño was found guilty of murder and accordingly sentenced to suffer the penalty of death.

The facts of this case, culled from the records, are as follows:

In an information dated August 18, 1997, Willerie Avendaño was charged with two counts of murder allegedly committed as follows:

That on or about the 29<sup>th</sup> day of July, 1997 at night time (sic) in Purok Bagong Silang, Barangay Aguas, Municipality of Rizal, Province of Occidental Mindoro, Philippines and within the jurisdiction of this Honorable Court, the accused being then armed with a jungle knife, with intent to kill, with treachery, did then and there willfully, unlawfully and feloniously, attack, assault and stab with the said weapon Remedios Castillo and Melvin Castillo inflicting upon the victims serious wounds which caused their untimely death.

CONTRARY TO LAW.<sup>[2]</sup>

Upon arraignment, the accused pleaded not guilty. Thereafter, trial on the merits ensued.

The principal witness for the prosecution was JEFFRE CASTILLO, an eight-year-old son of the victim Remedios Castillo and brother of the victim Melvin Castillo. In his testimony, he stated that his parents were named Remedios and Boyet; that they were six children in the family, namely, Michael, Dikong, Ape, Manolito, the victim Melvin and himself; and that he was a Grade I pupil at the Aguas Elementary School. He testified that he knows appellant, having known him for about three or four years before the incident of July 29, 1997. On said date, at around 6:00 P.M., he saw appellant in their house, looking for his plow and asking if he knew who got it, to which he replied that he did not. While appellant was in their house, his mother was upstairs and his *Kuya* Melvin was also inside the house. His father and the rest of his brothers and sisters were in Cabanatuan City. He recalled that appellant was then wearing a green t-shirt and shorts, the color of which he could not remember.<sup>[3]</sup> Thereafter, appellant left. After dinner, he, his mother and brother

went to sleep. Before they slept, he recalled they had a *pangmagdamagan* or overnight lamp which was turned on.

That night, according to Jeffre, they slept in the same room. He was suddenly awakened when he heard a commotion (*kalambugan*). However, by the time he woke up, the room was very dark because the lamp was already turned off. He heard his mother shout, "*Dikong, tulungan mo kami.*" When he heard the *kalambugan* he immediately eased his way to where they kept their pillows and tried to hide. Then, there was silence. Then he heard somebody going downstairs. His brother Melvin lit the lamp, while Jeffre stayed where he was. He then heard the person downstairs going up again.<sup>[4]</sup> He saw through his blanket that the person had come up: "*Naaninag ko po sa kumot yung tao.*"<sup>[5]</sup> That was when he distinctly heard his Kuya Melvin say, "*Kuya Willie, tama na, tama na!*" That was just before Melvin was killed.<sup>[6]</sup>

Jeffre recalled that someone coughed and he recognized the cough as that of his Kuya Willie. He recognized it because he had heard a similar cough on several occasions in the past when appellant frequented their house. He remained where he was until appellant left.

Jeffre said he fell asleep and was awakened only the following morning by persistent knocking on their door. He opened the door to find his Ate Annie (Juliana Castillo), Ate Norma (Roldan) and Ate Ann (Roldan) looking for his mother. He then told his Ate Annie that Willerrie Avendaño killed both his mother Remedios and his Kuya Melvin. He remembered that thereafter, their relatives as well as some policemen arrived.<sup>[7]</sup>

Jeffre recounted that he was brought to the police station where his sworn statement was taken and he signed it in the presence of Mayor Bartolome Miranda of Rizal town.<sup>[8]</sup> He said he was accompanied by his Lola Nena who read to him what was written in the statement because he did not know how to read. He said no one coached him to answer the way he did, particularly to the question: "*Sino ang taong umubo na yon?*" His answer was: "*Hindi ko po nakita pero kilala ko ang boses niya na si Kuya Willie.*"<sup>[9]</sup>

In the course of his testimony, Jeffre was shown a green t-shirt and a pair of shorts which he recognized as those appellant wore the night of July 29, 1997, when appellant went to their house earlier in the evening.<sup>[10]</sup>

On cross-examination, Jeffre said his father talked to him about the case four times, and that before coming to court, several of his relatives also talked to him about the case and told him to point to appellant as the person who killed his mother and brother.<sup>[11]</sup> The child further testified that on the night his brother and mother were killed, he heard his Kuya Willie cough four times – three times downstairs and once upstairs, after which he again pointed to appellant as the culprit behind the deaths of his mother and brother.<sup>[12]</sup>

Witnesses JULIANA CASTILLO<sup>[13]</sup> and VIRGILIO CASTILLO<sup>[14]</sup> testified that they were neighbors and relatives of the victims. They lived in a compound in Brgy. Aguas, Rizal, Occidental Mindoro where the houses of three brothers were built: the

house of Ramon Castillo, Juliana's husband; the house of Virgilio Castillo, who was still single and lived alone; and the house of Benedicto Castillo, his wife Remedios, and their children.

According to witnesses, appellant was the adopted son (*or palaki*) of an aunt of the Castillo brothers. Appellant had four children. His wife lived in San Roque I, Occidental Mindoro, and seldom visited him.<sup>[15]</sup> He owned and worked on a seven-hectare farm adjacent to the lot where the witnesses and the victims lived. He frequented the neighborhood while he bought food and supplies from the store of Juliana.<sup>[16]</sup> He spoke with Virgilio at times, although Virgilio said that they were not close because Virgilio was not used to having a *barkada*.<sup>[17]</sup>

Both witnesses claimed that when appellant was working on his farm, he frequented the house of Remedios, dropping by almost three times a day, especially when the victim's husband was not around. He sometimes had coffee or left some of his farm implements there. They claimed that appellant had spent a night there. Juliana further testified that on two occasions prior to the incident,<sup>[18]</sup> the victim Remedios confided to her that she was angry at appellant because he was courting her. Witness Juliana added she already suspected that fact even before Remedios confided in her, but she did not tell appellant's wife because the wife might not believe her.<sup>[19]</sup>

Juliana recalled that at about 7:00 P.M. on July 29, 1997, appellant arrived at her store and bought a cigarette. After that he invited Virgilio, who was then having dinner, for a drink. The latter declined.<sup>[20]</sup> She recalled that on that night, she and her children slept at around 8:30 P.M. She did not recall hearing any noise coming from Remedios' house because it was raining heavily then and she was also listening to the radio.<sup>[21]</sup> The next day, at about 7:00 A.M., her neighbor Norma Roldan and her daughter, Ann, arrived and asked her to accompany them to Remedios, to ask the latter for their wages for planting *palay*. Remedios was their *kabisilya* at that time. They knocked for about 30 minutes, calling "Nanie". Jeffre then opened the door and told them that his mother and brother were both dead and that the killer was his *Kuya Willie*.<sup>[22]</sup>

In his testimony,<sup>[23]</sup> Virgilio Castillo stated that, at approximately 7:00 to 7:10 P.M. of July 29, 1997, while he was seated in the terrace of Juliana Castillo's house, he saw appellant with a lighted cigarette enter the kitchen door of the victims' house. At that time, he saw Remedios washing clothes in the *poso* (water pump), about six arms-length from her house where her two sons were. Appellant inquired where his plow was. After about three minutes, he left. Virgilio recalled that appellant returned at about the same time he went out of Juliana's house. Appellant followed and invited him to "go around". According to Virgilio, he declined because he was tired. He could not recall where appellant went after. He remembered appellant wore a green t-shirt with the words "Landbank" printed in front and back, and a pair of dark green shorts. When shown a green t-shirt and short pants (marked as Exhibit "C"), witness identified the clothes as those worn by appellant the night of July 29, 1997. He said he learned of Remedios and Melvin's death the following morning. He said he did not hear anything the previous night as it was raining hard and because a cement wall separated his house from that of Remedios.

The fourth witness for the prosecution was SPO2 ESTEBAN MARIANO DIMALALUAN, [24] Chief of the Police Relations Section and Chief Investigator assigned at the Rizal Police Station. He testified that on July 30, 1997, his office received a radio report of an incident in Sitio Bagong Silang, Barangay Aguas, Rizal, Occidental Mindoro. Upon arrival at the scene he and three other policemen found the bodies of Remedios and Melvin Castillo, soaked in blood. They bore numerous stab wounds. The room where the bodies were found measured about three meters by four meters. After they took pictures of the bodies, and after further inspection, he noticed fresh footprints with mud on the toilet bowl and on the wall made of light materials. He also took pictures of the footprints but the negatives got exposed prematurely.

In the course of his investigation, said SPO2 Dimalaluan, he met eight-year-old Jeffre Castillo, who had survived the carnage. The boy told him that he heard his mother shout "*Dikong, tulungan mo kami*" and also his brother shouting "...*Kuya Willie,*" and "*Tulungan nyo kami, hindi na po ako uulit.*" According to Jeffre, the last time he saw appellant in their house was before nighttime of the day of the crime. [25] Dimalaluan added that Juliana and Virgilio also saw appellant then.

Later, according to Dimalaluan, they went to the house of appellant 150 meters away from the crime scene. There they found appellant who had just taken a bath. They asked him what he wore the day of the incident, and appellant pointed to the clothes he was wearing. Doubting appellant, Dimalaluan went inside the house. In the bathroom, a green t-shirt with "Landbank" print and dark short pants, newly washed and still wet, were hanging from the clothesline. He said he noticed dark stains on them. These were brought to the police station. During Dimalaluan's testimony he marked the stains found on the clothes. [26] These, however, were not subjected to laboratory examination.

Appellant voluntarily went with the police to the police station, according to Dimalaluan. While detained, appellant made an oral admission that he killed the victims and that he used a knife, said the police officer. Hence, on July 31, 1997, Dimalaluan accompanied appellant back to his house, where appellant got from the cabinet a hunting knife with scabbard and then handed it over to him. [27] According to Dimalaluan, appellant's admission was not reduced into writing [28] because when appellant made the admission, he was not assisted by a lawyer. The knife was likewise not subjected to any laboratory examination.

The last prosecution witness, DR. MICHAEL C. JIMENEZ, [29] Municipal Health Officer of Rizal, testified that he conducted the autopsy on the bodies of the victims. He issued their respective death certificates. [30]

Appellant WILLERIE AVENDAÑO [31] was presented by the defense as its sole witness. He denied committing the crimes and interposed an alibi. He said the deceased Remedios and he had no disagreements. [32] He did admit that in the late afternoon of July 29, 1997, he bought cigarettes from Juliana's store and there saw Virgilio Castillo. He denied he invited him for a drink. [33]

According to appellant, he learned of the stabbing incident the following day, July 30, 1997, at about 8:00 A.M. He then went to the place where the victims were killed.

Thereafter he went back home. A few moments later five policemen, headed by SPO2 Dimalaluan, arrived. They asked him to accompany them to Remedios' house. After taking them there, he returned home to cook. He later went back to Remedios' house and SPO2 Dimalaluan no longer allowed him to go home. Accompanied by policemen, he was allowed to go home only to lock the door of his house. There, they took one t-shirt and a pair of shorts. Thereafter, he was brought to the Rizal police station and detained.

According to appellant, he was told to admit to the killings but he refused, saying he did not do it. He did not give a written statement while under detention. The following day, July 31, 1997, the policemen brought him back to his house using a service jeep. They took a knife from his house and before they left, took a photograph of him pointing to the knife. He did not protest or say anything at the time because he was afraid.<sup>[34]</sup>

On the witness stand, he admitted ownership of the t-shirt and short pants taken from his house but denied having worn them in the afternoon of July 29, 1997. He averred he did not wash them and said that these were hanging for sometime when the police found them. Later, however, he said he hanged said clothes on July 29, 1997.<sup>[35]</sup>

On January 29, 1999, the RTC convicted appellant as follows:

WHEREFORE, and in the light of all the foregoing considerations, the Court finds that the accused Willerie (Willy) Avendaño is guilty beyond reasonable doubt of the crime of Murder, as defined and penalized under Article 248 of the Revised Penal Code, and Section 6 of Republic Act Number 7659, otherwise referred to as the Death Penalty Law, and is hereby sentenced to DEATH.

The accused is ordered to indemnify the heirs of the victims Remedios Hilario Castillo and Melvin Hilario Castillo in the amount of FIFTY THOUSAND PESOS (P50,000.000) for each victim, and to furthermore pay said heirs the amount of ONE HUNDRED THOUSAND PESOS (P100,000.00) for each victim as and for moral damages.

The Provincial Warden is hereby directed to cause the immediate transfer of the accused from the Provincial Jail at Magbay, San Jose, Occidental Mindoro to the New Bilibid Prisons, Muntinlupa City, Metro Manila.

SO ORDERED.<sup>[36]</sup>

Hence, this appeal. Appellant, in his brief, assigns the following errors for our consideration:

- I. THAT THE HONORABLE LOWER COURT ERRED IN GIVING DUE COURSE TO THE TESTIMONY OF JEFFRE (sic) CASTILLO WHO IS ONLY EIGHT YEARS OLD.
- II. THAT THE HONORABLE LOWER COURT ERRED IN GIVING CREDENCE TO THE TESTIMONY OF JEFFRE CASTILLO WHO PLAYS