

## THIRD DIVISION

[ G.R. No. 147315, January 13, 2003 ]

**PEOPLE OF THE PHILIPPINES, APPELLEE, VS. TOMAS VISPERAS JR. ALIAS "BOY SAKSAK"; JACINTO CRUZ ALIAS "BOY LAGARE" (ACQUITTED); AND AVELINO CABLAYAN ALIAS "WILLY" (ACQUITTED), ACCUSED, TOMAS VISPERAS JR. ALIAS "BOY SAKSAK," APPELLANT.**

### DECISION

#### **PANGANIBAN, J.:**

Once again, we rule that the credible and positive testimony of a single eyewitness is sufficient to sustain a conviction. Where the guilt of the accused is firmly established by the lone eyewitness' unwavering and unequivocal testimony that positively identifies him as the assailant, the defense of denial and alibi must inevitably collapse. Without any proven qualifying circumstance, however, the killing constitutes homicide only, not murder.

#### The Case

Tomas Visperas Jr. appeals the December 15, 2000 Decision<sup>[1]</sup> of the Regional Trial Court (RTC) of Dagupan City (Branch 42) in Criminal Case No. 99-03076-D, finding him guilty of murder as follows:

"WHEREFORE, premises considered, accused AVELINO CABLAYAN alias 'Willy' and JACINTO CRUZ alias 'Boy Lagare' are hereby acquitted of the offense charged. Accused TOMAS VISPERAS, JR. alias 'Boy Saksak', on the other hand, is hereby found guilty beyond reasonable doubt of the offense charged, which is MURDER as defined by Article 248 of the Revised Penal Code and penalized by RA No. 7659, otherwise known as the Heinous Crime Law, and there being no aggravating and mitigating circumstance to be considered, he is hereby sentenced to suffer the penalty of RECLUSION PERPETUA. In addition, he is to indemnify the death of Tito de Guzman in the amount P50,000.00, and to pay the heirs of the said victim P130,000.00 as actual and compensatory damages, P20,000.00 as temperate damages, P50,000.00 as moral damages, and costs."<sup>[2]</sup>

In the Information dated September 2, 1999, appellant, together with Jacinto Cruz and Avelino Cablayan, was charged in these words:

"That on or about June 23, 1999 at around 10:45 o'clock in the evening at [B]arangay Embarcadero, [M]unicipality of Mangaldan, [P]rovince of Pangasinan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with an unlicensed gun, with intent to kill, with treachery and evident premeditation and taking

advantage of nighttime, conspiring, confederating and mutually helping each other, did then and there, willfully, unlawfully and feloniously attack and shot TITO DE GUZMAN y PIDLAOAN causing his death shortly thereafter due to 'CARDIORESPIRATORY ARREST SECONDARY TO MASSIVE BRAIN INJURY DUE TO GUNSHOT WOUND', as per Certificate of Death issued by Dra. Ophelia Rivera, Rural Health Officer I, RHU, Mangaldan, Pangasinan, to the damage and prejudice of the legal heirs of said deceased TITO DE GUZMAN y PIDLAOAN and other consequential damages relative thereto."<sup>[3]</sup>

Upon his arraignment on September 27, 1999,<sup>[4]</sup> appellant, assisted by his counsel *de officio*,<sup>[5]</sup> pleaded not guilty. After trial in due course, the court *a quo* rendered the assailed Decision.

### **The Facts**

#### **Version of the Prosecution**

In its Brief, the Office of the Solicitor General (OSG) presents the prosecution's version of the facts as follows:

"On June 23, 1999, around 10:45 o'clock in the evening, Elmadona de Guzman was in the kitchen of their house in [B]arangay Emba[r]cadero, Mangaldan, Pangasinan, waiting for her husband to enter their abode. As she was thirsty, she went to a table in the kitchen on which a pitcher of glass water was. She was drinking water when she heard gunbursts. Shocked, she was temporarily immobilized, but after a few seconds, she moved towards the eastern window of the kitchen and peeped outside to where the sound of the gunbursts came from. With the outside illumined by the light from her mother's house which was near their house, she saw accused Jacinto Cruz alias 'Boy Lagare' holding a long gun, with its nozzle still smoking, pointed at the bloodied and falling body of her husband. Appellant Tomas Visperas ran towards the falling body of her husband and shot him at close range, on the forehead. Accused Avelino Cablayan alias 'Willy' then 'touched' the victim's body, apparently to see if he was dead and said 'let's go'.

"Jojit Cruz, her cousin, who was then heading towards his house, also heard gunbursts and ran towards the victim's house. When he got there, he saw the victim sprawled and bloodied on the ground of their backyard. He shouted calling for Elmadona to come down as her husband was shot dead. Crouching in the kitchen window, shocked, she went down and saw her husband's lifeless body lying on the ground. Together with Jojit Cruz, Ulyses Fernandez (her brother-in-law), Boyet Frialde, and Boyet Fernandez, she brought her husband to the Dagupan Centrum Hospital where he was pronounced dead on arrival. They then brought the dead body to Funeraria Aguila where Dr. Ophelia Rivera conducted the autopsy. Thereafter, they brought him to the house of his parents in Bolingit, San Carlos City for the wake and burial. The following morning, on June 24, 1999, Elmadona reported the shooting of her husband to police officer Bingo de Asis, in the Mangaldan Police Station.

"Around past 10:50 in the evening of June 23, 1999, Ferdinand 'Bingo' Zamora de Asis, received an information through radio that there was a shooting incident in the place of the victim Tito de Guzman in [B]arangay Embarcadero, Mangaldan, Pangasinan. His team composed of SPO2 Malanum, SPO1 Socao, SPO1 Aqui, Jr., SPO1 Garcia, and himself proceeded to the crime scene. When they got there, there were many people gathered around the area that they had to secure it to preserve the physical evidence. They found out from the crowd that the victim [had already been] brought to the hospital. Within the area where the body was found, they found an empty shell of a .30 caliber bullet. One (1) meter away from where the empty bullet was, they found blood stains. About seven (7) meters away from the blood stains was a concrete fence, and on its side facing the blood stain was a shallow hole apparently caused by a bullet. Near the blood stains, they found an empty pot, 'caldero,' and in it were pieces of meat, bits of flesh torn from the victim's body when he was shot.

"Dr. Ophelia T. Rivera conducted the autopsy of the victim.

x x x x x x x x

"She emphasized that the head wound caused the instantaneous death of the victim due to 'cardiorespiratory arrest secondary to massive brain injury.'"<sup>[6]</sup> (Citations omitted)

### **Version of the Defense**

For his part, appellant states his version of the antecedents in the following manner:

"At about 10:45 o'clock in the evening of June 23, 1999, at Barangay Embarcadero, Municipality of Mangaldan, Province of Pangasinan, Tito de Guzman was shot while walking along the pathway in an open parcel of land leading to his home. According to the Post-mortem Report, x x x, he sustained through and through wounds just about or below his armpit and on his forehead which caused his death due to 'cardio-respiratory arrest secondary to massive brain injury'.

"The prosecution presented as its first witness the widow, Elmadona de Guzman, as an 'eyewitness'. x x x.

x x x x x x x x

"The prosecution next presented Dr. Ophelia Rivera, Municipal Health Officer. In her direct examination, she was merely made to identify her Post-Mortem Report x x x.

x x x x x x x x

"The third and last witness for the prosecution is PO2 Ferdinand Zamora de Asis, Police Investigator, Mangaldan Police Station. The only significant testimony of PO2 de Asis are his findings that

- (1) one (1) empty shell bearing 'caliber .30' at the base thereof, which he assumed belonged to a .30 caliber carbine
- (2) blood stains about one (1) meter away from, and west of, the empty shell.  
A shallow hole caused by a bullet on the concrete fence of
- (3) Mrs. Columbres, about seven (7) meters from, and east of, the blood stain.

"All the accused, namely: TOMAS VISPERAS, Jr., JACINTO CRUZ AND AVELINO CABLAYAN interposed their separate and individual defense of alibi.

"On the basis of the alibi of Jacinto Cruz x x x and the alibi of Avelino Cablayan, both accused were acquitted of the charge against the three (3) accused of 'conspiring, confederating and mutually helping each other, did then and there attack and shot TITO DE GUZMAN Y PIDLAOAN causing his death shortly thereafter due to cardio-respiratory arrest secondary to massive brain injury due to gunshot wound'.

"On the other hand, accused-appellant Tomas Visperas, Jr. was convicted of the crime charged."<sup>[7]</sup> (Citations omitted)

### **Ruling of the Trial Court**

The RTC found Prosecution Witness Elmadona de Guzman's positive identification of appellant as one of the gunmen to be sufficient and convincing. It likewise upheld the investigation conducted by PO2 Ferdinand de Asis, which had affirmed the participation of appellant in the killing. Further, the trial court ruled that the defense of alibi lacked credibility, because it was not impossible for appellant to have been at the crime scene on that fateful night. It also found it odd that he did not even attend the wake and the burial of the victim who, he claimed, was his *compadre* and friend.

Hence, this appeal.<sup>[8]</sup>

### **Issues**

In his Brief, appellant raises for our consideration the RTC's alleged errors:

#### **I**

"The trial court erred in convicting the accused appellant Tomas Visperas, Jr. on the basis of the testimony of the widow, Elmadona de Guzman.

#### **II**

"The trial court erred [in] relying on the hearsay testimony of police officer De Asis x x x [regarding] an allege[d] statement of unidentified persons who were not called to the witness stand.

#### **III**

"The trial court erred in theorizing that a bullet fired from a '30-caliber' x x x handgun, after plowing through the ground, ricocheted and hit the forehead of the victim while 'falling down'[,]

#### IV

"The trial court erred in theorizing that the place where the empty 30-caliber cartridge was found is also the place where the gunman stood, hence the absence of tat[t]ooing on the forehead of the victim.

#### V

"The trial court erred in not acquitting the accused-appellant Tomas Visperas, Jr." [9]

In the main, the Court is called upon to determine whether the testimony of Elmadona de Guzman was credible and sufficient to convict appellant of murder. We will likewise ascertain whether the physical evidence lends credence to her account, and whether the trial court erred in accepting hearsay evidence.

### **The Court's Ruling**

The appeal is partly meritorious. Appellant is guilty of homicide, not murder.

#### **Main Issue:**

#### **Sufficiency of Prosecution Evidence**

This Court is convinced that through the staunch, positive and credible testimony of Elmadona, the prosecution was able to prove the guilt of appellant. Despite the grueling cross-examination, she testified repeatedly and unwaveringly that he had indeed shot her husband at close range. Specifically, she narrated that after her husband had faced a hail of bullets from a rifle, appellant approached him and shot him on the forehead. [10] Her testimony was corroborated by the Post-mortem Report of Dr. Ophelia T. Rivera, the medicolegal officer who had conducted the autopsy. According to the Report, the victim sustained three gunshot wounds, of which the head wound was the fatal one. The Report reads as follows:

"Findings:

x x x x x x x x

3. Point of entry: Gunshot wound, 1.2 [cm] x 1.2 cm, stellate in shape, edges inverted, frontal area, left Point of Exit: Gunshot wound, 5 cm x 1.5 cm, irregular in shape, edges everted, occipital area, Right, with brain eviscerating from the wound.

Depressed fracture of the skull, frontal area, left Comminuted fracture of the skull.

CAUSE OF DEATH;