

## EN BANC

**[ G.R. No. 140897, February 19, 2003 ]**

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
EFIPANIA DELA CRUZ GO (AT LARGE) AND RIZ JARLOS Y MATEO,  
ACCUSED.**

**RIZ JARLOS Y MATEO, ACCUSED-APPELLANT.**

### DECISION

**QUISUMBING, J.:**

For automatic review is the decision<sup>[1]</sup> dated August 31, 1999 of the Regional Trial Court of Marikina City, Branch 272, in Criminal Case No. 98-2397-MK, which found the accused-appellant Riz Jarlos y Mateo guilty of the murder of Ronald Beda Pillejera<sup>[2]</sup> and sentenced him to suffer the supreme penalty of death. He was also ordered to pay the victim's heirs P47,500 actual damages, P50,000 indemnity and P50,000 moral damages and to pay the costs of suit.

The facts of the case are as follows:

In an Information dated March 20, 1998, Jarlos, together with his co-accused Go, were charged with the crime of murder allegedly committed as follows:

That on or about the 20th day of November 1997, in the City of Marikina, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and mutually helping and aiding one another, armed with a gun, with intent to kill abused [sic] of superior strength, evident premeditation and treachery did then and there willfully, unlawfully and feloniously attack, assault and shot one Ronald Beda Pillejera, thereby inflicting upon the latter gun shot wounds which directly caused his death.

CONTRARY TO LAW.<sup>[3]</sup>

Accused Efipania dela Cruz Go remains at large. But accused-appellant Riz Jarlos y Mateo was arraigned on May 19, 1998, and with assistance of counsel, pleaded not guilty. Trial on the merits ensued thereafter.

Arman Gunio, the lone prosecution eyewitness, testified that at around 8:45 P.M.<sup>[4]</sup> of November 20, 1997, he was standing on the street in front of his residence in Calderon Street, Calumpang, Marikina, having a conversation with his neighbors.<sup>[5]</sup> Around twelve (12) meters away,<sup>[6]</sup> a white Mitsubishi Lancer was traveling down the road, when it was suddenly cut by a maroon Mitsubishi Space Wagon. Shouts were exchanged, then the driver of the maroon vehicle alighted, positioned himself at the driver's side of the white car and shot its driver. The body of the driver was

slightly exposed outside the vehicle and so the assailant shot him again. Four (4) successive shots were heard and the eyewitness and neighbors ran for cover.<sup>[7]</sup> But before witness Gunio ran, the assailant turned his face towards him and the witness was able to see the assailant's face, which was illuminated by the white car's headlights.<sup>[8]</sup> The driver of the maroon vehicle was later identified as the appellant Riz Jarlos and the driver of the white car, the victim Ronald Beda Pillejera.

Dr. Anthony Llamas, Medico-Legal Officer of the Philippine National Police Crime Laboratory, conducted the autopsy of Pillejera's remains and found the following gunshot wounds:

1) Gunshot wound, thru and thru, point of entry, right pre-auricular region, measuring 0.8 x 0.8 cm, 142 cm from the anterior midline, 135 cm from the vertex, with an area of tattooing measuring 12 x 12 cm, 14 cm right of the anterior midline, and a contusion collar measuring 0.2 cm inferiorly and 0.1 cm others, directed posteriorwards, upwards and to the left, fracturing the right temporal bone and the left parietal bone, lacerating both cerebral hemisphere and making a point of exit at the left parietal region, measuring 2.5 x 1 cm, 7 cm from the midsagittal line.

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3) Gunshot wound, point of entry, right ear, measuring 0.6 x 0.6 cm, 9.5 cm from the posterior midline, 11.5 cm from the vertex, directed posteriorwards, upwards and to the left point of re-entry, right post-auricular region, measuring 0.8 x 0.8 cm, 11.5 cm from the posterior midline, 11.3 cm from the vertex directed posteriorwards, upwards and to the left, fracturing the right temporal bone and lacerating through both cerebral hemispheres with 5 metallic fragments recovered thereat.

4) Gunshot wound, point of entry, right temporal region, measuring 0.6 x 0.6 cm, 7 cm from the posterior midline, 11 cm from the vertex, with a contusion collar measuring 0.3 cm laterally and inferiorly, directed posteriorwards, upwards and to the left, fracturing the right temporal bone and lacerating both cerebral hemispheres, with 4 metallic fragments recovered thereat.

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8) Gunshot wound, thru and thru, point of entry, left suprascapular region, measuring 0.8 x 0.8 cm, 4.5 cm from the posterior midline, 14.5 cm from the vertex, with a contusion collar measuring 0.3 cm medially and superiorly, directed anteriorwards, downwards and lateralwards, fracturing the first left posterior rib and lacerating the upper lobe of the left lung, making a point of exit at the left infraclavicular region, measuring 2.3 x .3 cm, 5 cm from the anterior midline.

9) Gunshot wound, point of entry, left shoulder, measuring 1 x 1 cm, 17 cm from the posterior midline, 15 cm from the vertex, with a contusion collar measuring 0.5 cm laterally and superiorly, directed anteriorwards, downwards and medialwards, fracturing the acromion process of the left scapula and lacerating both lobes of the left lung with a slug recovered in

the thoracic cavity.

10) Gunshot wound, point of entry, middle 3rd of the right arm, measuring 1 x 0.9 cm, 0.3 cm inferiorly, directed anteriorwards, upwards and medialwards, fracturing the right humerus, with a slug recovered must beneath the skin of the right shoulder.

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12) Gunshot wound, thru and thru, point of entry, proximal 3rd of the left forearm, measuring 1 x 1 cm, along its posterior midline, with a contusion collar measuring 0.3 cm laterally, directed slightly anteriorwards, slightly upwards and medialwards, lacerating the underlying soft tissues, making a point of exit, proximal 3rd of the left forearm, measuring 1.8 x 1.67 cm lateral to its posterior midline making a point of re-entry at the left costal region, measuring 1 x 0.8 cm, 202 cm from the anterior midline, 130 cm from the heel, with a uniform contusion collar measuring 0.3 cm, directed slightly upwards and to the right, passing thru the 9th intercostal space, lacerating the diaphragm and the spleen, with a slug recovered at the 11th intercostal space.

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16) Gunshot wound, superficial, distal 3rd of the left leg, measuring 1.8 x 1 cm, along its anterior midline, 5 cm from the heel.<sup>[9]</sup>

Dr. Llamas testified that the first shot hit the victim on the left trunk. Based on the angle of the wound, the gun was pointed slightly downwards, meaning that the victim was most probably seated with the assailant's gun level with the victim when fired.<sup>[10]</sup> He opined that the last shot made was aimed at the head, hitting the victim on the right side of the head before the ear, and based on the tattooing,<sup>[11]</sup> it was fired at close range or at least six (6) inches to two (2) feet away from the victim.<sup>[12]</sup> However, he stated that even before the last wound was inflicted, the victim was already dead because of two (2) earlier shots to the head<sup>[13]</sup> and an aggregate of six (6) fatal wounds.<sup>[14]</sup>

Expert witness Police Inspector Maritess Bugnay testified that she conducted a ballistic examination of the eight (8) fired cartridge cases<sup>[15]</sup> and three (3) metallic fragments<sup>[16]</sup> found at the scene of the crime. She compared these to the three (3) test bullets<sup>[17]</sup> of the 9-mm pistol<sup>[18]</sup> retrieved from Jarlos. Her findings were that all of these matched and they led to the conclusion that these were fired from one and the same pistol.<sup>[19]</sup>

Prosecution witness Romeo de Guzman, a Firearms and Explosives Officer of the Philippine National Police, testified that appellant Jarlos was a registered firearm holder of the pistol used in the crime. Appellant had authority to possess the pistol,<sup>[20]</sup> as shown by the certificate<sup>[21]</sup> and license<sup>[22]</sup> issued by Firearms and Explosives office, according to the witness.

Appellant invoked self-defense. He alleged that the vehicle he was driving was

bumped from behind. He went out of his vehicle to confront the offending driver. But instead he saw a hand poke out from the front passenger's seat window, wielding a gun which fired at him.<sup>[23]</sup> Appellant said he then crawled back to his car and retrieved his own gun. He heard the driver's car door open and saw the driver run away.<sup>[24]</sup> He then exchanged fire with the gunman in the white car, and when the latter fell down, he recognized him to be victim Pillejera, with whom he earlier had two altercations.<sup>[25]</sup> Appellant added Pillejera had previously filed a case against appellant for grave threats,<sup>[26]</sup> and had been calling appellant's home, threatening to kill appellant and his family.<sup>[27]</sup> Appellant believed Pillejera was jealous because appellant and co-accused Efipania Go were former sweethearts while Pillejera was her current lover.<sup>[28]</sup>

The trial court found for the prosecution, and accordingly convicted appellant as follows:

WHEREFORE, foregoing premises considered, the accused RIZ JARLOS y MATEO is hereby found GUILTY of the crime of Murder for the killing of Ronald Beda Pillejera qualified by treachery and evident premeditation and is sentenced to suffer the penalty of DEATH by lethal injection. The accused is further ordered to indemnify the heirs of the victim in the amount of P50,000.00; to pay the amount of P47,500.00 as funeral expenses, the amount of P50,000.00 as moral damages and to pay the costs of the suit. The case against the accused Efipania Dela Cruz Go is ordered archived.

SO ORDERED.<sup>[29]</sup>

The trial court ruled out self-defense because no exchange of gunfire between appellant and his victim was established. Moreover, the nature and number of wounds inflicted on the victim contradicted appellant's theory of self-defense.<sup>[30]</sup> The trial court found that treachery attended the killing as shown by the clear and convincing testimony of the eyewitness that "the accused suddenly and unexpectedly shot the victim at a close distance,"<sup>[31]</sup> thus qualifying the killing to murder.

The lower court also found that there was evident premeditation to kill the victim. The appellant himself had, according to the court, "admitted that before the shooting incident, he and the victim met several times and in all those times, confrontations between them ensued, one which led to the drawing of guns between them and he [the appellant] was sued for grave threats."<sup>[32]</sup> With this circumstance aggravating the offense, the court imposed on appellant the penalty of death.

Now before us on automatic review, appellant assigns the following errors:

- 1) THE TRIAL COURT GRAVELY ERRED IN FINDING THAT TREACHERY AND EVIDENT PREMEDITATION HAVE QUALIFIED THE KILLING,
- 2) THE CAPITAL PUNISHMENT AS IMPOSED BY THE TRIAL COURT IS NOT WARRANTED.<sup>[33]</sup>

We find relevant for resolution two issues: (1) Was the killing qualified by treachery and aggravated by evident premeditation? (2) Did the trial court err in sentencing appellant to death?

Appellant prays that he be held guilty only of homicide, not murder. He argues that there was no treachery because their previous encounters were sufficient to negate surprise and suddenness of any attack. When he got down from his van his face was fully illuminated by the beaming headlight of the victim's car. The victim then had every chance to identify him and recall that their previous meetings were marked with animosity, thus he should have been forewarned of the appellant's ominous hostility.<sup>[34]</sup>

Appellant stresses that there was no clear showing that the victim could not defend himself when attacked, and the shooting was not sudden or unexpected. He adds that the deceased had all the opportunity to neutralize him or defend himself. The fact that the wounds inflicted were multiple, said the appellant, did not *per se* make the attack treacherous.<sup>[35]</sup> He points out that nowhere in the eyewitness' testimony did the witness mention that appellant "suddenly and unexpectedly" shot the victim.<sup>[36]</sup>

The appellee, through the Office of the Solicitor General (OSG), contends that there was treachery in the killing. The OSG argues that it may be inferred from the surrounding circumstances that the mode of attack was consciously adopted. By the act of suddenly and unexpectedly shooting the victim at close range, said the OSG, the appellant deliberately employed means, methods or forms in the execution of the crime which tended directly to insure the execution of his criminal design without risk to himself arising from the defense which the victim might make.<sup>[37]</sup>

We find for the appellee. To establish treachery, two elements must concur: (1) that at the time of the attack, the victim was not in a position to defend himself, and (2) that the offender consciously adopted the particular means of attack employed.<sup>[38]</sup>

What the eyewitness, Arman Gunio, testified to as a sudden act was the maroon car's suddenly cutting in front of the white car, and not the act of shooting itself. However, after appellant's vehicle suddenly cut in front of the white car, blocking its path, amidst exchanges of shouts, appellant alighted, positioned himself in front of the victim and shot him. The victim was unarmed, seated behind the wheel. As held by the trial court, if there was really an exchange of fire between the appellant and victim, then police investigators who were at the scene of the crime should have recovered evidence<sup>[39]</sup> that the victim fired a gun. No such piece of evidence was found. The trial court concluded that the victim was not armed and did not pose a threat to the appellant at that specific instance. According to the trial court, in fact, the victim tried to sneak out through the passenger side in an effort to escape and save his life. This proved to be futile, said the trial court, because the appellant riddled the victim's body with bullets, and the victim died even before the last shot was fired at the victim's right temple at close range to ensure he stayed dead. As the evidence shows, according to the trial court, not only was Pillejera taken by surprise, but appellant's mode of attack was consciously adopted, as could be inferred from the surrounding circumstances.<sup>[40]</sup>