

FIRST DIVISION

[G.R. Nos. 116224-27, March 28, 2003]

**PEOPLE OF THE PHILIPPINES, APPELLEE, VS. DONATO CARAIG,
APPELLANT.**

D E C I S I O N

DAVIDE JR., C.J.:

Appellant Donato Caraig challenges the consolidated decision^[1] dated 28 April 1994 of the Regional Trial Court of Quezon City, Branch 88, finding him guilty beyond reasonable doubt of (1) three counts of murder in Criminal Cases Nos. Q-88-684 to Q-88-686 for the death of Melencio Castro, Jr., Roberto Raagas, and Placido Agustin; and (2) frustrated murder in Criminal Case No. Q-88-687 for the mortal wounding of Edmundo Diaz.

Initially, only a certain Rolando Laomoc and four *Does* were charged in the separate informations in Criminal Cases Nos. Q-88-684 to Q-88-687. The informations, however, were subsequently amended to substitute the names of Richard Doe and Roger Doe with Renato Laxamana and Donato Caraig. The trial court approved the amendments in its Order of 28 February 1989.^[2]

The Amended Information for Murder in Criminal Case No. Q-88-684 reads:

The undersigned Assistant City Prosecutor accuses ROLANDO LAOMOC Y CABE, DONATO CARAIG Y GARCIA, RENATO LAXAMANA and TWO (2) DOES, the latter whose true names and whereabouts have not as yet been ascertained, of the crime of MURDER, committed as follows:

That on or about the 5th day of October 1988, in Quezon City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring together and confederating with and mutually helping each other, with intent to kill, with evident premeditation and treachery, did, then and there, willfully, unlawfully and feloniously attack, assault and employ personal violence upon the person of one MELENCIO CASTRO Y PASCUA, JR., by then and there shooting him with a gun, hitting him on the different parts of the body, thereby inflicting upon him serious and mortal wounds, which were the direct and immediate cause of his death, to the damage and prejudice of the heirs of said Melencio P. Castro, Jr., in such amount as may be awarded under the provisions of the New Civil Code.^[3]

The informations for murder in Criminal Cases Nos. Q-88-685 and Q-88-686 are similarly worded, except as to the victims who were Roberto Raagas and Placido

Agustin, respectively.^[4]

The information for frustrated murder in Criminal Case No. Q-88-687 reads:

That on or about the 5th day of October 1988, in Quezon City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring together, confederating with and mutually helping each other, with intent to kill, with evident premeditation and treachery, did, then and there, willfully, unlawfully and feloniously attack, assault and employ personal violence upon the person of one EDMUNDO DIAZ Y DE DIOS, by then and there shooting him with a gun, hitting him on the different parts of his body, thereby inflicting upon him serious and mortal injuries, the offenders thus performing the acts of execution which would produce death as a consequence, but which nevertheless did not produce it by reason or causes independent of the wills of the perpetrators, that is, the timely medical intervention given to the latter, to the damage and prejudice of the said offended party in such amount as may be awarded under the provisions of the New Civil Code.^[5]

Laomoc was arrested, while the warrants for the arrest^[6] of Laxamana and Caraig were returned unserved.

On 9 November 1988, Laomoc was arraigned and pleaded not guilty.^[7] Trial proceeded as against him. However, on 31 May 1989, on motion of the prosecution and with Laomoc's consent, the trial court ordered the provisional dismissal and archival of the cases as against him on the ground of insufficiency of evidence. But later, on 28 October 1991, the prosecution filed a motion to revive all the cases as against Laomoc.^[8] In its Order of 4 December 1991, the trial court granted the motion and issued a warrant for the arrest of Laomoc.^[9] The latter, however, has remained at large.^[10]

Meanwhile, or on 18 July 1991, Caraig was arrested in Cavite.^[11] Upon arraignment, he entered a plea of not guilty in each case.^[12] The trial then proceeded as against him.

The prosecution's principal witness was Edmundo Diaz. He testified that at around 11:00 p.m. on 4 October 1988, he, together with Roberto Raagas, Melencio Castro Jr., and Placido Agustin went to the Orchids Beerhouse in Quezon City, in front of Ali Mall, Cubao. As they were leaving the beerhouse at past midnight or in the early morning of 5 October 1988, Caraig confronted them (*sinita*) whether they were military men. They did not answer.^[13] A rumble or fight suddenly ensued between his group and Caraig. It was a brief scuffle. Caraig then ran back to the Orchids Beerhouse.^[14] Thereafter, Edmundo and his companions rode on a Rocalex taxi. They were chased, however, by an old 1976 model white Galant car, which eventually blocked the taxi along 12th Avenue and P. Tuazon St., Quezon City, about 100 meters from the Orchids Beerhouse.^[15] Caraig, Laxamana, and Laomoc alighted from the Galant car. Each of them held a .45 caliber gun, which they simultaneously fired upon Edmundo and his companions.^[16] While the hail of bullets went on, Edmundo played dead. He then heard somebody utter: "*Pare, tama na*

yan. Patay na lahat ang mga iyan." When the car left, he asked the people who gathered around the scene to bring him to a hospital, where he underwent treatment for eighteen days. [17]

Another prosecution eyewitness, Danilo Javier, corroborated Edmundo's story. Danilo testified that at around 10:00 p.m. of 4 October 1988, he was at the Orchids Beerhouse drinking beer with several companions, namely, Caraig, Laxamana, and a certain Lando. [18] Later in the night, a commotion took place at the beerhouse exit. From there, Caraig re-entered the beerhouse shouting that someone had taken his gun. All the men in their table rushed towards the exit. Caraig, Laxamana, and Lando got into a car and chased a taxi. [19]

From the street pavement, Danilo observed that the taxi was moving rather slowly away from the beerhouse. The car blocked the taxi. Laxamana pointed a .45 caliber gun at the person inside the right side of the taxi, while Caraig went to the left side of the taxi. Then somebody handed over a .9 mm. gun to Caraig. When he received the gun, Caraig suddenly fired it upon the passengers in the taxi. Laxamana followed suit. A person tried to get out of the taxi, but Laxamana grabbed him and shot him in the head. Danilo claimed that he was about twenty-five meters from the scene of the incident. [20]

Prosecution witness SPO4 Lino Banaag, one of the policemen who responded to the shooting incident, declared that he found the dead body of Roberto Raagas on the passenger's seat beside the driver, that of Placido Agustin at the passenger's seat at the back, and that of Melencio Castro Jr. on the pavement beside the taxi. The victims were identified through their identification cards. He also found empty shells and slugs of .45 caliber and .9 mm. firearms around the taxi. Banaag was also informed by the other police officers that an injured person, whom they were able to identify as Edmundo Diaz, was brought to the Quirino Memorial Hospital. There, they took Edmundo's statement. [21]

Dr. Valentin Bernales, medico-legal officer of the National Bureau of Investigation, testified that he conducted an autopsy on the bodies of the three victims. He found that the cause of the death of Roberto Raagas was hemorrhage secondary to gunshot wounds resulting to shock. [22] He opined that from the location of the gunshot wounds it could be gleaned that when the victim was fired upon he was stooping forward and sitting. He approximated that the bullets came from a .9 mm. to a .45 caliber gun. [23] His autopsy on Placido Agustin's cadaver revealed that the cause of his death was also hemorrhage secondary to gunshot wounds resulting to shock. [24] The body sustained eleven wounds. The varying measurements of the entrance wounds disclosed that the firearms used were a .9 mm. to .45 mm. caliber range. On the cadaver of Melencio Castro Jr., Dr. Bernales testified that he found two gunshot wounds. The first was located on the head at the back portion, right side and directed forward slightly downward and medially to the left. It involved the brain, the skull bone, and exited on the axillary area or at the back on the left side. The second was directed backward, downward and laterally; it involved the lungs and exited on the back portion of his scapula. [25]

Dr. Alberto Capuno, a resident surgeon at the Quirino Memorial Medical Center, testified that he treated Edmundo Diaz for three gunshot wounds. These wounds

perforated the chest, stomach, and leg and were fatal.^[26]

The wives of the dead victims testified on the civil aspect of the crime.

Mrs. Ruth Agustin testified that her husband was 37 years old at the time of his death. Her husband was an employee of the Social Security System receiving a monthly salary of ₱5,000. She and her children had suffered mental anguish and torture and financial setback as a result of her husband's untimely demise. She spent around ₱150,000 for the funeral of her husband.^[27]

Mrs. Rhodora Raagas testified that her husband was 40 years old at the time of his death. He was the President of Sinclair Security and Allied Services, a family-owned corporation, with a monthly compensation of ₱30,000. Mrs. Raagas claimed to have spent more than ₱100,000 for funeral expenses. She said that she and her children were at a loss and in a state of shock as a consequence of her husband's death.^[28]

Mrs. Merle Loria-Castro testified that her husband was 36 years old at the time of his death. He was a taxi driver of New Rocalex with an average earning of ₱500 per day or ₱7,500 a month. She spent a total of ₱19,900 for the burial of her husband.^[29]

The defense presented as its sole witness appellant Caraig, who was still a member of the Philippine Constabulary (PC) when the incident in question happened. He recalled that on the night of 4 October 1988, he went to the Orchids Beerhouse to look for Rolando Laomoc, a driver of the service vehicle of the PC. Caraig was with Laxamana, another member of the PC. They used their service car, a 1979 white Galant. They found Laomoc and joined him in drinking beer with twelve other persons, one of whom he recognized as prosecution witness Danilo Javier. Later, he gave the car keys to Laomoc and excused himself from the group, as he wanted to go back to the barracks.^[30]

When Caraig stepped out of the beerhouse, a man whom he later identified as prosecution witness Edmundo Diaz approached him and asked whether he was a member of the PC. Caraig replied in the affirmative. Edmundo countered that he was a member of the Criminal Investigation Service (CIS). Caraig then asked for identification or proof of Edmundo's claim, but the latter remarked, "*CIS 'to. Makulit ka.*" Ignoring Edmundo this time, Caraig proceeded to the street pavement.^[31]

Suddenly, Edmundo poked a gun at Caraig's side. But Caraig merely turned his back against Edmundo. The latter then hit him with a gun on his left eyebrow and lips. Suddenly, the companions of Edmundo ganged up on him, held his arms, and hit him on the different parts of his body. They took his service pistol. After almost ten minutes, he was able to kick the side of a parked car, and they all fell down. He forthwith ran towards the beerhouse and told his companions that his service pistol was grabbed from him. His companions scampered towards the exit of the beerhouse.^[32]

Caraig was aided by Laxamana while he walked towards the exit. He pointed to Laomoc the taxi where his assailants rode. Laomoc and his companions rode in the Galant car and chased the taxi. Laxamana and Caraig were still at the street pavement when they saw the taxi passengers exchange gunfire with those riding in

the Galant car. The gunfire ceased when the car blocked the taxi. Caraig was shocked with what he saw, and he remained rooted from his vantage point for one or two minutes. After the gunfight, he noticed his pistol service on the ground, got it, and later rode in the car with Laxamana and Laomoc back to their headquarters. [33]

Caraig denied that he was one of the assailants. He also claimed that Danilo Javier was still in the beerhouse when the chase started, and arrived at the scene only when everything was over. [34]

In its challenged decision, the trial court found that the prosecution established with moral certainty that Caraig was one of the assailants who shot the victims. The testimonies of the prosecution witnesses were clear, straightforward, and convincing as opposed to the testimony of the defense witness, which consisted merely of denial and alibi. These defenses cannot prevail over the positive identification of Caraig by eyewitnesses Edmundo Diaz and Danilo Javier, as well as the documentary, physical, and other testimonial evidence offered by the prosecution. The trial court appreciated treachery and conspiracy in the commission of the crime. It then decreed:

WHEREFORE, premises considered accused Donato Caraig is found Guilty beyond reasonable doubt of the three counts of murder for the deaths of Melencio Castro, Roberto Raagas and Placido Agustin and sentenced to serve the penalty of *reclusion perpetua* for each of the offense and ordered to pay the heirs of Melencio Castro the sum of ₱19,900 for burial expenses, ₱50,000 for indemnity and ₱100,000 for moral damages; to pay the heirs of Roberto Raagas the sum of ₱140,000 for burial expenses, ₱50,000 for indemnity and ₱500,000 for moral damages [and] to pay the heirs Placido Agustin the sum of ₱150,000 for burial expense, ₱50,000 for indemnity and ₱300,000 for moral damages.

Accused is likewise found guilty beyond reasonable doubt of the offense of frustrated murder for the mortal wounding of Edmundo Diaz and sentenced to serve the penalty of eight (8) years and one (1) day of *prision mayor* as minimum to fourteen (14) years, eight (8) months and one (1) day of *reclusion temporal* as maximum, and to pay the cost. [35]

Caraig seasonably appealed to us from the judgment of conviction.

For causes hereunder discussed, the disposition of these cases was delayed.

On 26 September 1994, we accepted the appeal in these cases but required the clerk of court of the trial court to explain why the records of the cases transmitted were incomplete, and directed him to require the stenographers concerned to submit the transcripts of stenographic notes (TSNs).

In our resolution of 23 November 1994, we noted the Compliance of the clerk of court, who explained that a part of the records were irretrievably lost and that he required the stenographers to submit to the trial court their copies of the TSNs.

Except for Mirasol Ramos, the stenographers submitted the TSNs. Mirasol Ramos was the stenographer who took down the stenographic notes of the 1 February 1989