

## THIRD DIVISION

[ G.R. No. 137782, April 01, 2003 ]

**PEOPLE OF THE PHILIPPINES, APPELLEE, VS. ARTURO NICOLAS  
Y RINGOR, APPELLANT.**

### D E C I S I O N

**CARPIO MORALES, J.:**

This is an appeal from the decision<sup>[1]</sup> of the Regional Trial Court, Branch 66, Makati City, finding appellant Arturo Nicolas y Ringor guilty beyond reasonable doubt of murder for the killing of Delbie Bermejo (the victim) and sentencing him to suffer the penalty of *reclusion perpetua* and to pay the heirs of the victim the amount of P127,500.00 as liquidated damages and P50,000.00 as moral damages.

In an Information<sup>[2]</sup> dated January 5, 1998, appellant was indicted as follows:

That on or about the 1<sup>st</sup> day of January, 1998, in the City of Makati, Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused, armed with a gun, with intent to kill and by means of treachery, did then and there willfully, unlawfully and feloniously shoot one DELBIE BERMEJO y VELASCO hitting him on his neck and breast, thereby inflicting serious and mortal wounds upon the latter which directly caused his death.

CONTRARY TO LAW.

Upon arraignment<sup>[3]</sup> on February 5, 1998, appellant, assisted by counsel, entered a plea of not guilty. Thereafter, trial on the merits ensued.

Culled from the records of the case are the following facts established by the prosecution:

On January 1, 1998, at about 1:30 a.m., the victim, his two children Ruby and Rodel and nephew Ariel Bermejo were walking along a small alley in Makati City after attending a New Year's party at a relative's house. Behind them was appellant Arturo Nicolas, a dismissed Army Sergeant, who greeted the victim<sup>[4]</sup> and his nephew Ariel.<sup>[5]</sup> The victim, in turn, greeted appellant.<sup>[6]</sup> Suddenly, a gunshot was heard by the victim's companions and on turning around to see what had happened, they saw him falling to the ground as appellant was pointing a gun at him.<sup>[7]</sup> Terrified at what she saw, Ruby ran and went home to engage the help of others to aid her in bringing her father to the hospital.<sup>[8]</sup> In the meantime, as Ariel remained where he was, he saw appellant shoot the victim, prompting him to run and report the incident to a relative, Ernesto Suante.<sup>[9]</sup>

The victim was brought to the Makati Medical Center where he was pronounced dead on arrival.<sup>[10]</sup>

The postmortem examination conducted by Dr. Tomas Suguitan of the Philippine National Police Crime Laboratory, Medico Legal Division, in Camp Crame, Quezon City showed that the victim sustained two gunshot wounds, one at the left side of his nape and the other at the left side of his chest.<sup>[11]</sup> It also showed that he had four abrasions on his knees, forehead and shoulder,<sup>[12]</sup> which Dr. Suguitan surmised were caused by the victim's fall when he was shot.<sup>[13]</sup> The doctor concluded that the cause of the victim's death was hemorrhage as a result of gunshot wounds of his neck and trunk.<sup>[14]</sup>

Finding for the prosecution, the trial court found appellant guilty beyond reasonable doubt of murder by Decision of February 10, 1999, the dispositive portion of which is quoted *verbatim*:

IN VIEW OF THE FOREGOING, judgment is hereby rendered finding accused Arturo Nicolas y Ringor guilty beyond reasonable doubt of the crime of murder with the qualifying circumstance of treachery and the Court hereby sentences him to suffer, taking into consideration the absence of aggravating and mitigating circumstance, the penalty of reclusion perpetua and to pay the heirs of Delbie Bermejo the sum of P50,000.00 as moral damages and the sum of P127,500.00 as liquidated damages.

SO ORDERED.<sup>[15]</sup>

Hence, the present appeal anchored on the following assigned errors:

A. THE TRIAL COURT ERRED IN FINDING THAT THE ACCUSED IS [NOT] ENTITLED TO AN ACQUITTAL BASED ON THE FOLLOWING GROUNDS:

1. NO MOTIVE FOR THE KILLING WAS ESTABLISHED;
2. THE GUN WHERE THE BULLETS WERE FIRED WAS NOT RECOVERED NOR PRESENTED;
3. THE BALLISTIC REPORT ON THE THIRD SNUG (sic) ALLEGEDLY SURRENDERED BY THE ACCUSED WAS NOT PRESENTED;
4. THE RESULT OF THE PARAFFIN TEST CONDUCTED ON THE ACCUSED WAS NOT PRESENTED.

B. THE TRIAL COURT ERRED IN FINDING THAT ACCUSED WAS GUILTY BEYOND REASONABLE DOUBT.<sup>[16]</sup>

Appellant argues that as the prosecution failed to establish any motive for the killing of the victim with whom he was not acquainted, he had no reason for killing him. He also argues that the failure of the prosecution to present any witness who could testify that he owned a .9 mm pistol, the type of firearm from which the slugs recovered from the crime scene were fired, infirms the evidence against him as does the failure to recover or present to the court the gun used in the perpetration of the crime.

Appellant then zeroes in on the failure of the prosecution to present the ballistic examination report on the empty shell of a .9 mm pistol forwarded to the Crime Laboratory which SPO2 Nestor Valenzuela claimed in the Final Investigation Report<sup>[17]</sup> was surrendered by him (appellant). To appellant, such failure likewise infirms the evidence for the prosecution.

Finally, appellant asserts that the testimonies of the prosecution witnesses are replete with inconsistencies which warrant his acquittal.

Upon the other hand, appellant harps on alibi to exculpate him from any liability, he claiming that at the time of the incident, he was at home celebrating the New Year with his wife and three children.<sup>[18]</sup>

The appeal is bereft of merit.

Appellant was positively identified as **the** assailant by two credible eyewitnesses. The victim's nephew Ariel testified thus:

Q: On January 1, at around 1:30 a.m. 1998, where were you?

A: We were about to go home together with my uncle at Blueberry Street.

Q: Where is this located?

A: Makati City.

Q: Who were with you when you were going home Mr. witness?

A: Delbie Bermejo and his two children.

Q: What are the names of his two children?

A: Ruby Bermejo and Rodel Bermejo.

Q: And do you remember of (sic) any untoward incident which happened at that time when you were walking home?

A: **There was a sudden shot and as I turned my back I saw the accused Arturo Nicolas holding and pointing the gun at my uncle then he fired the gun and ran away.**

Q: Do you recall where the gun was pointed at your uncle?

A: At his body, Sir.

Q: The first shot (sic) that was allegedly fired by the accused, which part of the body of your uncle was he (sic) shot?

A: Hindi ko po alam yung unang putok kung saan nanggaling dahil nakatalikod po ako but on the second shot I looked back and **I saw the**

**accused pointing his gun to (sic) my uncle who was about to fall down and he again fired at my uncle.**

x x x

**Q: For the record, you were referring to the gunman in this case, could you please point him out to the Honorable Court – the person that shot your uncle.**

**A: Ayun po.**

Interpreter: **Witness pointed to a man wearing an orange T-shirt who when asked stood up and answered by the name of Arturo Nicolas.**<sup>[19]</sup>  
(Emphasis supplied.)

And the victim's thirteen year old daughter Ruby testified thus:

**Q: Do you know how your father was shot?**

**A: Yes, Sir.**

**Q: Why do you know Miss witness?**

**A: Because I was there when he was shot, Sir.**

**Q: Do you recall where he was shot?**

**A: Yes, Sir.**

**Q: Where?**

**A: Sa eskinita po. (small alley)**

x x x

**Q: Who shot your father?**

**A: Arturo Nicolas, Sir.**

**Q: Will you please point him out to this Court.**

**A: Siya po. (witness pointing).**

Interpreter: Witness pointed to a man wearing orange T-shirt who when asked:

**Q: Pangalan nyo po?**

**A: Arturo Nicolas.**

**Q: Do you recall how the accused shot your father Miss witness?**

**A: Yes, Sir.**

**Q: How, paano, ipakita mo.**

**A: When we were about to go home coming from my uncle's house because we attended a New**

Year's party, I saw the accused at the corner who was about to enter the "eskinita" and at that time my father's hand was on top of my shoulder (akbay-akbay ako), he greeted my father "Hi". My father allowed me to go ahead because of the small alley and **while I was walking I suddenly heard a shot and when I turned my back I saw the accused pointing the gun at my father.**

Q: And then what did you do next Miss witness?

A: Because I was very much scared, I ran away.  
[20]

There is no reason to doubt the veracity of the testimonies of Ariel and Ruby, there being no indication that they were actuated by any improper motive<sup>[21]</sup> to falsely testify against appellant, their relationship to the victim notwithstanding. In fact, relationship could even strengthen the witnesses' credibility, it being unnatural for aggrieved relatives to falsely accuse someone other than the actual culprit,<sup>[22]</sup> for their natural interest in securing the conviction of the guilty would deter them from implicating any other.<sup>[23]</sup>

As for the prosecution's failure to prove appellant's motive for the killing, motive is not an element of the crime of murder, hence, it does not have to be proved.<sup>[24]</sup> It becomes material only when the evidence is circumstantial or inconclusive, and there is doubt whether a crime has been committed or whether the accused has committed it.<sup>[25]</sup> Ample direct evidence having been presented through the testimonies of Ruby and Ariel who identified appellant as the perpetrator, appellant's motive is immaterial.<sup>[26]</sup>

With respect to the instrument used in the killing of the victim, its presentation is not indispensable in the prosecution of the accused.<sup>[27]</sup> The weapon used in the killing, after all, is also not an element of the crime of murder.<sup>[28]</sup> Thus, this Court held in *People v. Bello*: <sup>[29]</sup>

For purposes of conviction, it is enough that the prosecution establishes by proof beyond reasonable doubt that a crime was committed and the accused is the author thereof. The production of the weapon used in the commission of the crime is not a condition *sine qua non* for the discharge of such burden, for the same may not have been recovered at all from the assailant. (Underscoring supplied.)

Neither is the presentation of a witness to testify that appellant owned or was in possession of a .9 mm pistol. Besides, it is not for the courts, much more the defense, to dictate what evidence to present or who should take the witness stand at the trial of a case.<sup>[30]</sup> As this Court held in *People v. Bulfango*: <sup>[31]</sup>

The prosecution has the exclusive prerogative to determine whom to present as witnesses. The prosecution need not present each and every witness but only as may be needed to meet the quantum of proof necessary to establish the guilt of the accused beyond reasonable doubt.