

EN BANC

[G.R. No. 144975, June 18, 2003]

THE PEOPLE OF THE PHILIPPINES, APPELLEE, VS. AMADOR SAPIGAO (AT LARGE); JOSE SAPIGAO (AT LARGE); SAMUEL SAPIGAO (AT LARGE); ELPIDIO MAMERTO; ARTURO MAMERTO, SR. (AT LARGE); ROBERT OBILLO (AT LARGE); VERSON MAMERTO (AT LARGE); FRANCIS SAPIGAO (AT LARGE); AND REYNALDO SAPIGAO ALIAS "CALLONG" (AT LARGE), APPELLANTS.

D E C I S I O N

VITUG, J.:

On 24 December 1998, around eleven o'clock in the evening, full-swing preparations for the Christmas Eve festivities among the residents of *Barangay* Carusocan Sur, Asingan, Pangasinan, were just about in their final stages. Neighbors and friends had by then gathered together in anticipation of the much-awaited *noche buena* to be partaken at the strike of midnight. The Christmas air, however, gave no warning of an impending bloody incident which would shatter an otherwise pervading yuletide festivity.

Emmanuel Sapigao and his brother Gem Sapigao were on their way on board a motorcycle, driven by Gem Sapigao, towards Zone III of the *barangay* to collect a "*compadre's* contribution" for the Christmas party. When the two brothers reached the place fronting the residence of *barangay* captain Arturo Mamerto, Sr., his nephew Reynaldo Sapigao and Elpidio Mamerto blocked their path. Minutes later, Reynaldo Sapigao, then holding a carbine rifle, began firing at them. Alarmed, the brothers jumped off the motorcycle. Gem Sapigao promptly parked the vehicle on one side of the street, and the two scampered for safety. Emmanuel hid behind a concrete wall, approximately ten to twelve meters away, while Gem Sapigao hid in the nearby house of a certain Shirley Pisalvo. From their hiding places, the brothers saw Reynaldo running and shouting, "*Uncle, uncle, sinugod si Kapitan.*" Almost immediately, they then saw Elpidio Mamerto, Verson Mamerto, and Robert Obillo, all armed trooping into the house of the *barangay* captain obviously in response to Reynaldo's call. Elpidio Mamerto and Robert Mamerto were both holding M-16 armalite rifles. Verson Mamerto had a carbine. The *barangay* captain, Arturo Mamerto, Sr., was armed with a Caliber .45 pistol. Emmanuel Sapigao heard Arturo Mamerto giving instructions to the group to shoot anyone who would come near the abandoned motorcycle. Momentarily, Emmanuel Sapigao saw from his hidden perch his cousin Lauro Sapigao passed by in an owner-type jeepney. About half an hour later, Lauro Sapigao, together with George Cabanilla and Puroy Valdez, returned and stopped near the abandoned motorcycle. Emmanuel wanted to warn Lauro but he was too afraid of being seen. Moments after they alighted from the *jeepney*, the group composed of Elpidio Mamerto, Arturo Mamerto, Sr., Verson Mamerto, Robert Obillo, Amador Sapigao, Jose Sapigao, Reynaldo Sapigao, Francis Sapigao and

Samuel Sapigao rained fire on Lauro Sapigao. Gem Sapigao saw Jose Sapigao fire the first shot. Amador Sapigao approached the fallen Lauro Sapigao, got hold of the latter's Caliber .45 and, with it, again shot the hapless victim. One of those in the group shouted — "*One is gone, many more will follow.*"

Terrified at what they had seen, the two brothers, Emmanuel and Gem, ran towards the rice field and proceeded to the north where they flagged down a tricycle, which took them to the Asingan police station. Fearing for their lives, the two subsequently went into hiding. It was only two months later when they finally decided to report the incident to the National Bureau of Investigation office in San Fernando, La Union.

The autopsy conducted by Dr. Leonardo Guerrero, the rural health physician of Asingan, showed that Lauro Sapigao sustained seven gunshot wounds. The cause of death was severe intracranial injury and hypovolemic shock secondary to gunshot wounds. The 39-year old Lauro Sapigao, a member of the Philippine marines with a rank of corporal, was survived by his wife and two minor children.

On 14 July 1999, following an investigation, an accusatory information for murder was filed against the several accused —

"That on or about 24 December 1998, in the evening, at *Barangay Carusocan Sur, Asingan, Pangasinan*, and within the jurisdiction of this Honorable Court, the above-named accused, in conspiracy with each other, armed with long and short firearms, with intent to kill, treachery and evident premeditation, did then and there willfully, unlawfully, and feloniously, lay in wait, attack, assault and shoot LAURO SAPIGAO, inflicting upon him fatal gunshot wounds in the vital parts of his body which caused his instantaneous death, to the damage and prejudice of his heirs.

"Contrary to Article 248, Revised Penal Code, as amended by Republic Act 7659."^[1]

On 12 January 2000, the information was amended to state that the killing was committed with the use of unlicensed firearms. Except for Elpidio Mamerto, the eight other accused remained at large and yet to be brought to justice.

Against the evidence submitted by the prosecution, heretofore narrated, Elpidio Mamerto raised the defense of *alibi*. He said that he was in his house the entire fateful evening with numerous friends and relatives preparing for the *noche buena*. While his house was but twenty meters from the place of the incident, he, however, was unaware of the shooting that took place because he and his relatives were busy enjoying themselves. He denied having seen Lauro Sapigao on the date of the incident. Corroborating Mamerto's *alibi* were his neighbors and relatives who gave testimony to the effect that Mamerto did not, even for a second, leave his residence around the time when Lauro Sapigao was shot to death.

On 17 July 2000, the Regional Trial Court of Urdaneta City, Branch 46, rendered its decision holding Elpidio Mamerto guilty of murder and imposing on him the extreme penalty of death; it concluded:

"WHEREFORE, judgment is hereby rendered, CONVICTING ELPIDIO MAMERTO of the crime of Murder qualified with aggravated murder, and the Court sentences him to suffer the penalty of DEATH to be implemented in the manner as provided for by law; ordering Elpidio Mamerto to indemnify the heirs of Lauro Sapigao the sum of P70,000.00 as actual damages, another sum of P75,000.00 for moral damages and the further sum of P50,000.00 as exemplary damages.

"The Clerk of Court is hereby ordered to prepare the *mitimus* and to transmit the entire records of the case to the Supreme Court of the Philippines for automatic review.

"The jail warden, Bureau of Jail Management and Penology (BJMP), Urdaneta District Jail, Urdaneta City, is hereby ordered to deliver the living body of Elpidio Mamerto to the National Bilibid Prisons, Muntinlupa City, immediately upon receipt of this decision."^[2]

In the instant automatic appeal, Elpidio Sapigao has raised, by way of issues, his assignment of errors thusly:

"WHETHER, NOTWITHSTANDING THE INCONSISTENCIES IN THE TESTIMONIES OF THE WITNESSES, THE PARTICIPATION OF ACCUSED IN THE COMMISSION OF THE CRIME WAS ESTABLISHED BEYOND REASONABLE DOUBT

"WHETHER THE TRIAL COURT WAS JUSTIFIED IN FINDING THAT TREACHERY ATTENDED THE KILLING OF LAURO SAPIGAO

"WHETHER THERE IS PROOF BEYOND REASONABLE DOUBT THAT APPELLANT MAMERTO PARTICIPATED IN THE SHOOTING OF LAURO SAPIGAO WITH THE USE OF AN UNLICENSED FIREARM."^[3]

The defense of *alibi*, like denial, is easily rendered dubious and weak where, such as in this instance, positive identification has been made by eyewitnesses.

Emmanuel Sapigao, at the witness stand, detailed the participation of Elpidio Mamerto in the killing of Lauro Sapigao. He testified:

"Q. And after hiding yourself in that cemented wall, what happened next?

"A. I tried to peep and I saw Reynaldo Sapigao running towards the South shouting something, sir.

"Q. What did he shout?

"A. He shouted, '*Uncle, uncle, dinarop da ni kapitan,*' meaning '*uncle, uncle, sinugod si kapitan.*'

"Q. Do you know who this uncle Reynaldo was calling?

"A. Yes, sir.

"Q. Who?

"A. It was ***Elpidio Mamerto***, sir.

"A. Lauro Sapigao, sir.

"Q. So, what happened next when you saw your cousin driving his owner type jeep going towards Villasis?

"A. I was about to get near him but I was afraid because they might shoot me.

"COURT:

"Q. You did not stop him?

"A. No sir, I did not stop him.

"Q. So, he passed by?

"A. Yes, sir.

"PROSECUTOR TOMBOC:

"Q. What transpired next after your cousin Lauro Sapigao passed by driving his owner type jeep?

"A. After a few minutes, Lauro Sapigao came back, sir.

"Q. So, where did he return at that time?

"A. Going to North towards Asingan, sir.

"Q. And while your cousin was going North, what happened?

"A. He suddenly stopped his jeep, sir.

"Q. Where?

"A. At the western side of the street, sir.

"COURT:

"Q. How far was it from the house of Arturo Mamerto, Sr.?

"A. More or less 10 meters, sir.

"Q. So, what else transpired after your cousin Lauro Sapigao stopped his jeep?

"A. When Lauro Sapigao stopped his jeep, he alighted from the jeep, sir.

"COURT:

"Q. Was he alone?

"A. No, sir, with two companions.

"Q. Do you know who were these companions of Lauro Sapigao in that jeep?

"A. Yes, sir, they were George Cabanilla and Puroy Valdez, sir.

"Q. After Lauro Sapigao alighted from the jeep, what else happened?

"A. Lauro Sapigao walked around towards the back of the jeep, sir.