

EN BANC

[G.R. No. 139185, September 29, 2003]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ALFONSO RIVERA @ "PONSO" AND TEDDY RIVERA (AT LARGE),
ACCUSED-APPELLANTS.**^[1]

DECISION

PUNO, J.:

One shot in Jonnifer Losaria's head turned what would have been an evening of fun and drinks into a night of horror and death. On April 24, 1998, an information for Murder was filed against the accused Alfonso Rivera and Teddy Rivera, viz:

That on or about the 19th day of October, 1997, in the evening, in Barangay Dumga, Municipality of Makato, Province of Aklan, Republic of the Philippines, and within the jurisdiction of the Honorable Court, the above-named accused, conspiring, confederating and mutually helping one another, with treachery and evident premeditation, without just motive, with intent to kill one Jonnifer T. Losaria, and armed with a gun, did then and there willfully, unlawfully and feloniously attack, assault and wound said JONNIFER T. LOSARIA, thereby inflicting upon the latter mortal wound, to wit:

"HEENT:

(+) gunshot wound, head

Point of Entry: ` ½' x ` ½', temporal area, left

Point of Exit: None

Note: One deformed slug was recovered beneath the scalp, parietal area, right."

As per certification of Dr. Rane L. Tabanar, M.D., Municipal Health Officer, Makato, Aklan, herein attached, which wound directly caused the death of the said Jonnifer T. Losaria.

That as a result of the criminal acts of the accused, the heirs of the victim suffered actual and compensatory damages in the amount of FIFTY THOUSAND PESOS (P50,000.00).

CONTRARY TO LAW.^[2]

As the accused Teddy Rivera was at large, only the accused-appellant Alfonso Rivera was arraigned. He entered a plea of "not guilty."

The lone eyewitness for the prosecution was Renato Losaria, younger brother of the

victim, Jonnifer Losaria. Renato lives with his parents-in-law at Dumga, Makato, Aklan, while Jonnifer lives in the Losaria abode. Both of them are tricycle drivers.

At about 5:00 p.m. on October 19, 1997, Renato was in his parents-in-law's house. Renato was standing at the balcony, waiting for Jonnifer to pass by to tell him that Junior Casimero whom he was supposed to fetch in the nearby Casimero residence had already left at about 4:30 p.m. The two were going to drink *tuba* together. At about 6:00 to 7:00 p.m., Renato saw Jonnifer on his tricycle parked in front of Casimero's house, about ten arm's length from the house of Renato's parents-in-law. Renato headed towards their gate to go to Jonnifer and tell him that Junior already went ahead. But when Renato was already outside the gate, the accused Teddy Rivera and his younger brother Alfonso Rivera, the appellant, suddenly appeared on a motorcycle, coming from the direction of Tangalan to Numancia, or behind Jonnifer. Appellant was the driver while Teddy was the back passenger. The Riveras slowed down in front of the Casimero abode, and upon reaching the left side of Jonnifer, Teddy crossed his arms, left over right, and at a distance of three feet shot Jonnifer once using a 0.38 caliber revolver. Jonnifer, still on his tricycle and holding the handle bars, was shot on the left temple. Renato is familiar with a 0.38 caliber revolver as this is used by the police. The Riveras then sped away. It was about 6:20 p.m. Renato saw the shooting incident as he was just about ten meters in front of Jonnifer and the accused Riveras and the place was illuminated by the street light. Afraid that he might also be shot, Renato hid behind the banana trees near the road. When the Rivera brothers left, Renato went to Jonnifer and checked if he could still be brought to the hospital, but he was already dead. Renato is unaware of the reason why his brother was shot. He knows the accused Riveras as they are his friends. The police investigated Renato. He executed an affidavit^[3] regarding the shooting incident and affirmed its execution and contents during his testimony. He also identified appellant during his testimony.^[4]

SPO2 Ferdinand Relayson corroborated Renato's testimony. He has been a PNP officer in the Makato Police Station since July 1991. At the time of the shooting incident, he was an investigator at the station. He is also a resident of Makato, Aklan. On October 19, 1997, at around 6:25 p.m., Barangay Kagawad Edwin Torrenueva of Barangay Dumga reported the shooting incident to Relayson. He entered the report in the police blotter. He and some companions, including Chief of Police Senior Inspector Rey Tang, proceeded to the crime scene and arrived there at about 6:30 p.m. There were many people gathered around the body of the victim. The police team investigated several people therein, among which was Renato Losaria. The latter told them that he witnessed the crime and that the perpetrators rode a motorcycle. They asked him the name of the assailants and he answered that he was not sure of their names, but was certain that he could identify them. Relayson's team also gathered from the residents of the *barangay* that the suspects went towards Makato. They went after the Rivera brothers. Upon arrival at the Makato public market, they learned from some tricycle drivers that a motorcycle passed the national road towards Numancia. By nighttime, they were able to talk to one of the tricycle drivers, Juanito Baylon, who informed them that somebody asked him earlier that day if he knew the residence of Jonnifer Losaria.

Pursuing the lead the police team gathered, Relayson invited the Rivera brothers for identification of the witnesses about two days after the shooting incident. Only the appellant Alfonso Rivera went to the station. Renato Losaria and Juanito Baylon

were present. When the appellant was seated at the complaint desk, Losaria identified appellant as one of the two assailants. Baylon also identified appellant as the person who inquired about Jonnifer Losaria on the day he was killed. Appellant was identified not in a police line-up or with other persons, contrary to the police station's standard operating procedure in the identification of suspects. Relayson neither took appellant's statement nor did he arrest him after the identification. Instead, he was made to go home. Relayson also took possession of a slug^[5] which was turned over one day after the shooting incident by the Rural Health Physician, Dr. Rane Tabanar. He examined the body of Jonnifer Losaria. About a month after the shooting incident, or on November 20, 1997, Relayson took Baylon's and Losaria's statements regarding the incident. He then prepared a complaint and explained that he did not immediately file the complaint because one of the witnesses, Renato Losaria, was still busy with the wake of his brother, Jonnifer Losaria. Relayson also prepared a sketch of the crime scene.^[6]

Dr. Rane Tabanar, Rural Health Physician of Makato Rural Health Unit and a resident of Poblacion, Makato, autopsied the body of Jonnifer Losaria on October 20, 1997 upon request of the Makato Police Station. He reduced his findings into a report^[7] and indicated in a sketch of a human body the location of the gunshot wound on the left temporal area.^[8] The cause of the victim's death was cardio-respiratory arrest secondary to hemorrhagic shock, secondary to gunshot wound. With this wound, there was no chance for the victim to have survived. Dr. Tabanar did not notice any powder burn or contusion mark at the point of entry of the bullet. There was no point of exit. Dr. Tabanar recovered a slug beneath the victim's scalp, parietal area, and turned this over to the police on October 20, 1997 after the post-mortem examination. In his opinion, the gunman was on the left side of the victim, approximately more than or about one meter.^[9]

Juanito Baylon, a tricycle driver and resident of Dumga, Makato, testified that on October 19, 1997, at around 6:00 p.m., he was driving his tricycle towards Barangay Cabatanga, Makato, Aklan to burn rice stalks. On his way there, two men on a black Yamaha motorcycle stopped him. They came from the opposite direction. The driver asked Baylon if he knew Jonnifer Losaria. Baylon saw the two men clearly as he was about only one meter away from them and there was still light coming from the sun. He did not see, however, the face of the back passenger as he was facing sideways and Baylon's attention was focused on the driver who was talking to him. He did not know their names; it was the first time he met them. Later, when he returned home from Barangay Cabatanga, he passed the crime scene at about 7:00 p.m. Chief of Police Rey Tang was there. Baylon told Tang about the two men who had earlier asked him about the victim. About three days after the shooting incident, the police invited Baylon to the police station to identify the suspect. When he met appellant Alfonso Rivera, he immediately told the police that he was the person who asked him about Jonnifer Losaria. The police did not present other suspects with appellant. After identifying him, Baylon learned from a policeman that his name was Alfonso Rivera. On November 20, 1997, he executed an affidavit in relation to the shooting incident.^[10] He identified the appellant in open court.^[11]

The defense foisted the defense of alibi. Arlenie Villanueva, a resident of Navitas, Numancia, Aklan since birth, testified. He is the neighbor of the accused Riveras.

On October 19, 1997, Villanueva was in Merlinda Rivera's house, hauling gravel, sand and water to mix with cement. He was working with Joel, Joe, Rowen, Harry, Pabling and the appellant Alfonso Rivera. They started working at 7:00 a.m. and finished at 4:30 p.m. Upon finishing their work, they washed up and rested, then drank one container of *tuba* and Tanduay Rhum. They finished drinking at about 10:00 p.m. The whole time, from 7:00 a.m. to 10:00 p.m., the appellant did not leave the group. At past 10:00 p.m., Villanueva went home as he was already dizzy. Appellant was left in the house. As a resident of Navitas since birth, Villanueva testified that neither appellant nor his parents owned any kind of motorcycle. Nobody in Navitas, he said, owned a black motorcycle. The other accused, Teddy Rivera, was not in Aklan at that time. He was employed in the Philippine Army and was assigned in Nueva Ecija.^[12]

John Donald Ili, Sangguniang Kabataan (SK) Chairman of Navitas, Numancia, Aklan since June 1996, also took the witness stand. He has known the appellant Alfonso Rivera since 1985 when he (Ili) started living in Navitas. He does not know the victim, Jonnifer Losaria.

On October 19, 1997, the SK sponsored a basketball tournament in Navitas in preparation for the forthcoming *fiesta* on October 24, 1997. The tournament was scheduled to start at 6:00 p.m. At about 5:45 p.m., he looked for some *barangay tanods* to maintain peace and order during the game. He found some in the house of Merlinda Rivera, the appellant Alfonso Rivera's mother. They were having a drinking spree with appellant. He approached the *tanods* and told them to report to duty at the plaza. Only one reported for duty, but the rest assured him that they would follow. Ili then went back to the plaza.

Ili does not know the distance between the crime scene and the house of Merlinda Rivera, thus he could not tell whether the appellant was in the crime scene at the time Jonnifer Losaria was killed. He did not execute an affidavit regarding the whereabouts of the appellant on October 19, 1997 and was asked by Merlinda Rivera to testify only two days before she took the witness stand. She asked him to tell the truth that he knew appellant was in Merlinda's house at the time of the shooting incident. When the prosecutor asked Ili why Merlinda was aware that Ili knew appellant was not involved in the killing of Jonnifer, Ili answered that Merlinda saw him when he went to Merlinda's residence. Upon clarification of the court, he testified that he did not see Merlinda in her residence when he was there.^[13]

Finally, the appellant Alfonso Rivera testified. He is a businessman and resident of Navitas, Numancia, Aklan. He lives in the house of his mother, Merlinda Rivera. He knows the victim, Jonnifer Losaria, as he is a friend of his elder brother, his co-accused Teddy Rivera who has been with the 7th Infantry Division stationed at Fort Ramon Magsaysay in Palayan City, Nueva Ecija even before the shooting incident. When the accused Teddy Rivera takes a vacation in Navitas, Jonnifer pays a visit in the Rivera abode. The last time Teddy was in Navitas prior to the shooting incident was on October 5, 1997. He stayed for only two days with his wife and three children, then left with his wife for La Carlota, Bacolod City.

The appellant denied the accusation against him. At about 6:20 p.m. on October 19, 1997, he was at home in Navitas, Numancia, Aklan. He was helping out in the

construction of his mother's kitchen with some companions, namely, Pabling, Harry, Joel, Joe, and Arlenie Villanueva, in the spirit of *bayanihan*. The group started working at about 7:00 a.m. and finished at 4:30 p.m. Thereafter, they took a rest, washed up and drank liquor until 10:00 p.m. He then took a rest. Three days after, or on October 22, 1997, the Numancia police summoned him to the police station. He was not told of the reason for the invitation and when he arrived in the station, he was told to wait for a police officer from Makato. When the latter did not arrive, he was told to go home at about noontime. The following day or on October 23, 1997, the Makato police summoned him to the station. The police asked him his whereabouts on the day of the killing and he said that he was working in their house. While he was being questioned, Renato Losaria and Juanito Baylon arrived. Appellant did not know the two. A policeman put his hand on appellant's shoulder and asked the two if he was the one involved in the killing of Jonnifer Losaria. The two looked at each other, then went out. Afterwards, they were told to go home. Neither appellant nor his co-accused brother or parents own a motorcycle. His relative, Noel Castillo, owns a motorcycle but it is not black. Both appellant and accused Teddy Rivera know how to drive a motorcycle. Alfonso does not know the location of Barangay Dumga, the scene of the crime, but knows where Barangay Cabatanga is because his wife has an aunt there. However, on questions by the trial judge, Alfonso declared that Barangay Dumga is about ten kilometers away from Navitas where he claims to have been at the time of the killing. Riding a motorcycle on average speed, the distance could be traversed in twenty minutes. A portion of the road connecting Navitas and Numancia is rough while another portion is asphalted.

To prove that the accused Teddy Rivera was not in Aklan at the time of the killing, the defense presented to the court the mission order of the accused Teddy Rivera dated October 4, 1997 authorizing him to proceed to La Carlota, Bacolod City^[14] and a certification dated November 24, 1998 issued by Mess Sgt. Arturo Sabado stating that Teddy Rivera has been dropped from his mess effective October 5, 1997 to October 15, 1997 and assumed his mess upon reporting on October 16, 1997. Attached to the certification was the daily disposition of troops stating that on October 16, 1997, the accused Teddy Rivera was included in his daily disposition of troops.^[15] Merlinda Rivera secured the documents from the accused Teddy Rivera. Appellant Alfonso Rivera executed an affidavit relating his version of the case.^[16]

The trial court upheld the prosecution and convicted the appellant Alfonso Rivera, viz:

WHEREFORE, the Court finds the accused ALFONSO RIVERA Y URETA alias "Ponso" GUILTY beyond reasonable doubt of MURDER and hereby imposes upon him the penalty of DEATH.

Further, the Court hereby orders the said accused to pay to the heirs of the victim Jonnifer T. Losaria, the amount of P50,000.00 as indemnity for the death of the latter.

Furthermore, the Court hereby orders that the case filed herein against the accused Teddy U. Rivera, who, up to this point, is still at large, be ARCHIVED,^[17] without prejudice to its revival upon his apprehension.