

## THIRD DIVISION

**[ G.R. Nos. 135779-81, November 21, 2003 ]**

**PEOPLE OF THE PHILIPPINES, APPELLEE, VS. LUCIANO DE GUZMAN, EFREN REYES AND BERNARD BUSTAMANTE, APPELLANTS.**

### DECISION

**CORONA, J.:**

This is an appeal from the decision<sup>[1]</sup> of the Regional Trial Court, Branch 54, Alaminos, Pangasinan, in Criminal Case Nos. 2504-A, 2505-A and 2506-A finding herein appellants Luciano de Guzman, Efren Reyes and Bernardo Bustamante guilty of three counts of murder.

The separate informations charging the appellants with murder read:

#### CRIMINAL CASE NO. 2504-A

That on or about March 9, 1992, at sitio Mandapat, Brgy. Malimpin, Municipality of Dasol, Province of Pangasinan, New Republic of the Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping one another, with intent to kill, with treachery and evident premeditation with abuse of superior strength and taking advantage of the night time to ensure (the) commission of the offense did then and there wilfully, unlawfully and feloniously shoot Presente Calamno with the use of M-16 and M-14 rifles, inflicting upon him multiple gun shot wounds which caused his instantaneous death, to the damage and prejudice of his heirs.

Contrary to Article 248 of the Revised Penal Code.

#### CRIMINAL CASE NO. 2505-A

That on or about March 9, 1992, at sitio Mandapat, Brgy. Malimpin, Municipality of Dasol, Province of Pangasinan, New Republic of the Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping one another, with intent to kill, with treachery and evident premeditation, with abuse of superior strength and taking advantage of the night time to ensure the commission of the crime, did then and there wilfully, unlawfully and feloniously shoot Bernardo Calamno with M-16 and M-14 rifles inflicting upon him several gun shot wounds which caused his instantaneous death, to the damage and prejudice of his heirs.

Contrary to Article 248 of the Revised Penal Code.

CRIMINAL CASE NO. 2506-A

That on or about March 9, 1992, at sitio Mandapat, Brgy. Malimpin, Municipality of Dasol, Province of Pangasinan, New Republic of the Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping one another, with intent to kill, with treachery and evident premeditation, with abuse of superior strength and taking advantage of the night time to ensure (the) commission of the offense, did then and there wilfully, unlawfully and feloniously shoot Teofilo Calamno, Jr. with M-16 and M-14 rifles inflicting upon him several gun shot wounds which caused his instantaneous death, to the damage and prejudice of his heirs.

Contrary to Article 248 of the Revised Penal Code.

The facts of the case, based on the testimonies of the prosecution witnesses, were summarized by the Solicitor General in his brief:

On March 9, 1992, about 8:00 o'clock in the evening, Ariston (Ariston) Calamno was on the way to the house of his father, Bernardo (Bernardo) Calamno, to get a match. Bernardo's house was located at Mandapat, Malimpin, Dasol, Pangasinan. Before Ariston could reach Bernardo's house, from a distance of five (5) to six (6) meters, Ariston saw six (6) persons and recognized three (3) of them as appellants, who had long firearms pointed at his father, Bernardo, his brother, Presente (Presente) Calamno, and his cousin, Teofilo (Teofilo) Calamno.

Ariston saw Bernardo sitting on the armrest of a sofa; beside Bernardo was Teofilo. Presente was between the two (2). The three (3) were seated against the wall of Bernardo's house. The place was illuminated by moonlight. Ariston then hid behind banana trees. He saw appellant de Guzman shoot Bernardo, Presente and Teofilo one after the other. Appellants Reyes and Bustamante were beside de Guzman. Bernardo, Teofilo and Presente fell from their seats. Appellants watched the three (3) victims for about three (3) minutes. After ascertaining that the victims were dead, appellants left. Because of fear and feeling that the assailants were still around, Ariston went back to his house, which was located west of his father's house, 20 to 25 meters away.

Ariston's and Teofilo's wives, Salvacion and Nelia, reported the incident to the Barangay Captain. Ariston was present when the police conducted an investigation and took pictures of Bernardo's house and its wall; the sofa, where Bernardo and Presente were seated at the time of the incident; the bodies of Bernardo, Presente, and Teofilo. Thereafter, Ariston executed a statement about the incident.

Teofilo (Teofilo, Sr.) Calamno, Sr., father of deceased Teofilo Calamno, Jr., testified that on March 9, 1992, about 8:00 o'clock in the evening, he was resting at his house at Barangay Malimpin, Dasol, Pangasinan, when he heard gunshots coming from the house of Bernardo Calamno, about

twenty (20) meters away.

Teofilo, Sr. went down his house and crawled up to the house of Bernardo. From a distance of about seven (7) to eight (8) meters, he saw eight (8) armed men, three (3) of whom he recognized as appellants. The moon was bright and he saw de Guzman fire at Bernardo, Presente and Teofilo, Jr. Appellants Reyes and Bustamante were about one-half meter away from de Guzman, standing on the latter's right side and facing the three (3) victims. Reyes and Bustamante also carried long firearms.

After the shots were fired, appellants stayed at the scene of the incident for a while to determine if the victims were still alive. After appellants had left, Teofilo, Sr. came out from where he was hiding to check on the victims. Finding that the three (3) victims were dead, he went home. He did not report the incident to the barangay authorities because appellants might see him and shoot him. The next morning, on his way to report the incident to the barangay authorities, he first went to the house of Nelia Calamno, husband of Teofilo Calamno, Jr. He was informed that Nelia Calamno had gone to report the incident to the Barangay Captain. Thus, Teofilo, Sr. went to town where he met the Barangay Captain and his companions, Chief of Police Nacar and some policemen, who were on their way to the house of the deceased Bernardo Calamno to conduct an investigation.

Teofilo, Sr. went with Chief Nacar's group. A photographer took pictures of the victims, Presente Calamno, Teofilo Calamno, Jr., (and) Bernardo Calamno. The cadavers were taken by the policemen to the Municipal Hall of Dasol, Pangasinan for autopsy. Teofilo, Sr. then executed a sworn statement regarding the incident.

Nelia Calamno, wife of Teofilo Calamno, Jr., testified that her house was more than fifty (50) meters away from the house of deceased Bernardo Calamno. On March 9, 1992, about 8:00 o'clock in the evening, while feeding her dog, she heard the barking of dogs and footsteps going northward, after which she saw a group of armed men pass by her house. They were dressed in fatigue uniforms and carrying long firearms. She recognized appellant Luciano de Guzman as one of them. Nelia was holding a kerosene lamp and the place was illuminated by moonlight.

The group had walked about fifty (50) meters from her house when Nelia heard successive gunshots coming from the house of Bernardo Calamno. She was frightened as she was alone with her child. Her husband, Teofilo Calamno, Jr., was not in their house as he had gone to the house of Bernardo Calamno that evening. She did not go out of her house that night and she was not able to sleep since her husband did not come home.

The following morning, on March 10, 1992, Salvacion Calamno, wife of Ariston Calamno, went to Nelia's house and told her that Teofilo, Jr. was dead. Salvacion asked her to come with her to report the matter to the Barangay Captain, Emilio Cabrillo. After reporting the incident to Cabrillo,

the latter in turn reported the matter to the police. Nelia and Salvacion proceeded to the house of deceased Bernardo Calamno where they saw the bodies of Bernardo, Teofilo, Jr. and Presente. After a while, the policemen arrived with a photographer. Pictures of the place and the bodies were taken. The bodies of the victims were taken to the municipal hall for autopsy. Nelia executed a sworn statement before the Dasol PNP station. She testified that she spent P12,000.00 for Teofilo, Jr.'s funeral. She declared that her husband was a farmer and earned the equivalent of fifty (50) to seventy (70) cavans of palay a year; they had one child who was two (2) years old when Teofilo, Jr. was slain.

Salvacion Calamno, wife of Ariston Calamno, testified that the deceased Bernardo Calamno was her father-in-law, Teofilo Calamno, Jr. the cousin of her husband and Presente Calamno her brother-in-law. She knew appellants Luciano de Guzman, who was a resident of Barangay Malimpin, Mandapat, Pangasinan, Efren Reyes and Bernardo Bustamante because they were CAFGU members in San Vicente, Dasol, Pangasinan but she did not know accused Sgt. Orpilla. She and her husband spent the total amount of P23,000.00 for the funeral expenses of Bernardo and Presente. She was with Nelia Calamno when the incident was reported to the Barangay Captain.

SPO3 Fredelito Nacar, Deputy Chief of the Dasol PNP Station, Pangasinan, testified that he headed the investigation conducted on the killing of Bernardo, Presente and Teofilo, Jr., all surnamed Calamno. He recovered at the crime scene twelve (12) empty shells of M-14 bullets and twelve (12) empty shells of M-16 bullets, some of which were about two (2) meters away from the bodies of the victims and some scattered on the dead bodies. He testified that some of the CAFGU members were issued garand rifles and some Armalites M-14 and M-16. He took the statements of the relatives of the victims. (citations omitted)

Appellants put up the defense of denial and alibi. Appellants de Guzman and Reyes testified that they did not know anything about the killing of the Calamnos. On the day of the incident, they were on duty from 6:00 to 8:00 p.m. at the Citizen Armed Force Geographical Unit (CAFGU) camp in San Vicente, Dasol, Pangasinan. After their duty, they cooked and ate their supper, went to sleep in their bunkhouse and woke up at 6:00 a.m. the following day. Appellant Bustamante also denied killing the Calamnos but had a different alibi. He testified that, on the day of the incident, he was on leave and was at home cementing his *balcon*, together with Wilfredo de Leon, Eduardo Bustamante and Patricio Pulido. They started working around 8:00 a.m. and finished at 9:00 p.m. Defense witness Wilfredo de Leon, the cousin of appellant Bustamante, corroborated his alibi. He claimed that since it was already late, he slept in appellant Bustamante's house that night. They woke up at 6:00 a.m. the following day and only learned of the Calamno murders at about 9:00 a.m.

The trial court, however, gave credence to the prosecution's version and convicted appellants of murder:

WHEREFORE, in consideration of the foregoing premises, judgment is hereby rendered, declaring all the accused Luciano de Guzman, Bernardo Bustamante and Efren Reyes in conspiracy with and acting in concert

with one another, in Criminal Case Nos. 2504-A, 2505-A and 2506-A GUILTY BEYOND REASONABLE DOUBT of the crime of Murder as defined under Article 248 of the Revised Penal Code with the aggravating circumstances of nighttime and treachery and shall, therefore, suffer the single indivisible penalty of Reclusion Perpetua in Criminal Case No. 2504-A for each of the above-mentioned accused; another single indivisible penalty of Reclusion Perpetua in Criminal Case No. 2505-A for each of the above-mentioned accused and another single indivisible penalty of Reclusion Perpetua in Criminal Case No. 2506-A for each of the above-mentioned accused.

The Court finds that all the accused are liable for damages in the sum of P50,000.00 for each of the victims in accordance with law and all accused are severally liable for these indemnities imposed.

Until accused Samuel Orpilla is apprehended by the authorities, together with his co-accused, John Doe and Peter Doe, these `Does' not having been identified as yet, these cases are ordered archived in the meantime. However, let Alias Warrant of Arrest issue as against them.

IT IS SO ORDERED.

Dissatisfied with the decision, appellants elevated these cases to us on appeal. Two separate briefs were filed, one by appellant de Guzman and another by appellants Reyes and Bustamante.

Appellant de Guzman raises the following assignments of error:

- I. THE TRIAL COURT ERRED IN DISREGARDING THE APPELLANT'S DEFENSE OF ALIBI;
- II. THE TRIAL COURT VIOLATED THE CONSTITUTIONAL PRESUMPTION OF INNOCENCE AS IT RESOLVED ALL DOUBTS AGAINST THE APPELLANT LUCIANO DE GUZMAN.

On the other hand, appellants Reyes and Bustamante raise the following assignments of error:

- I. THE LOWER COURT GRAVELY ERRED IN CONCLUDING THAT ACCUSED-APPELLANT BERNARDO BUSTAMANTE PARTICIPATED IN THE COMPLAINED INCIDENT BECAUSE HE WAS FOUND POSITIVE OF POWDER BURNS;
- II. THE LOWER COURT GRAVELY ERRED IN HOLDING THAT ACCUSED-APPELLANTS EFREN REYES AND BERNARDO BUSTAMANTE CONSPIRED WITH THEIR CO-ACCUSED LUCIANO DE GUZMAN;
- III. LOWER COURT GRAVELY ERRED IN CONCLUDING THAT THE CRIME COMPLAINED OF WAS PERPETRATED BY TREACHERY AND NIGHTTIME;
- IV. THE LOWER COURT GRAVELY ERRED IN DISREGARDING THE EVIDENCE PROFFERED BY ACCUSED-APPELLANT EFREN REYES AND BERNARDO BUSTAMANTE.